

SEVENTY-SECOND DAY

(Tuesday, May 19, 1981)

The Senate met at 10:00 o'clock a.m., pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Andujar, Blake, Brooks, Brown, Caperton, Doggett, Farabee, Glasgow, Harris, Howard, Jones, Kothmann, Leedom, Mauzy, McKnight, Meier, Mengden, Ogg, Parker, Richards, Santiesteban, Sarpalius, Short, Snelson, Traeger, Travis, Truan, Uribe, Vale, Williams, Wilson.

A quorum was announced present.

Senator W. E. (Pete) Snelson offered the invocation as follows:

Our greatest Heavenly Father, humbly we come before Thee this day, beseeching Thy guidance on the actions of this body. We ask Thou to forgive our sins, and our shortcomings, and ask Thy continued guidance as we continue the work of this State. These things we ask in Thy Name. Amen.

On motion of Senator Mauzy and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

REPORTS OF STANDING COMMITTEES

Senator Harris submitted the following report for the Committee on Economic Development:

H.B. 1957 (Again reported)

Senator Santiesteban submitted the following report for the Committee on Natural Resources:

C.S.S.B. 721 (Read first time)

C.S.S.B. 983 (Read first time)

C.S.S.B. 562 (Read first time)

Senator Jones submitted the following report for the Committee on Finance:

H.B. 1576

H.B. 1559

H.B. 1838

H.B. 1677 (Amended)

S.B. 218

S.B. 1215

H.B. 1884

H.B. 1947

H.B. 1090

H.B. 888

S.B. 1150

C.S.S.B. 951 (Read first time)

C.S.S.J.R. 54 (Read first time)

Senator Farabee submitted the following report for the Committee on State Affairs:

S.B. 612
H.B. 1210
H.B. 1162
H.B. 919
H.J.R. 117
H.B. 1419
H.B. 805 (Amended)
H.B. 152 (Amended)
C.S.H.B. 892 (Read first time)
C.S.H.B. 1903 (Read first time)
C.S.S.B. 1101 (Read first time)
C.S.H.B. 521 (Read first time)

Senator Brooks submitted the following report for the Committee on Human Resources:

H.B. 1628
H.B. 1685
S.B. 831 (Amended)
H.B. 518
H.B. 1383

Senator Truan, Acting Chairman, submitted the following report for the Committee on Human Resources:

S.B. 1040

Senator Brooks submitted the following report for the Committee on Human Resources:

H.B. 2278
C.S.S.B. 1178 (Read first time)

GUEST PRESENTED

The President presented Mr. James Elrod of San Antonio, Member of the State Board of Education.

Mr. Elrod was welcomed as a guest of the Senate today.

SENATE BILLS AND RESOLUTIONS ON FIRST READING

On motion of Senator Mauzy and by unanimous consent, the following bills and resolutions were introduced, read first time and referred to the Committee indicated:

S.B. 1283 by Truan Education
Relating to increasing the number of trustees on the governing boards of certain junior college districts.

S.B. 1284 by Glasgow Finance
Appropriating funds to Texas Woman's University for repair or replacement of laboratory facilities and equipment destroyed or damaged by fire.

S.C.R. 119 by Mengden Education
Directing the Coordinating Board, Texas College and University System to conduct an annual cost study by program area of public institutions of higher education.

S.R. 656 by Andujar Human Resources
Directing the Senate Subcommittee on Public Health and Welfare to conduct an interim study of the problems of sexually transmitted diseases.

S.R. 657 by Andujar Human Resources
Directing the Subcommittee on Public Health and Welfare to conduct an interim study of health and welfare services provided through Block Grant Funding.

S.R. 675 by Leedom Finance
Establishing an interim committee to study State agency fees, charges, federal grant funds and earned federal funds.

HOUSE BILL AND RESOLUTION ON FIRST READING

The following bill and resolution received from the House were read the first time and referred to the Committee indicated:

H.B. 1932, To Committee on State Affairs.

H.J.R. 87, To Committee on Finance.

BILLS AND RESOLUTIONS SIGNED

The President announced the signing in the presence of the Senate, after the caption had been read, the following enrolled bills and resolutions:

S.B. 227	S.B. 603	S.B. 747	S.B. 958
S.B. 259	S.B. 608	S.B. 754	S.B. 986
S.B. 261	S.B. 615	S.B. 816	S.B. 987
S.B. 303	S.B. 651	S.B. 834	S.B. 1013
S.B. 345	S.B. 653	S.B. 839	S.B. 1064
S.B. 360	S.B. 687	S.B. 850	S.B. 1121
S.B. 381	S.B. 695	S.B. 862	S.B. 1131
S.B. 446	S.B. 702	S.B. 897	S.B. 1149
S.B. 502	S.B. 710	S.B. 928	S.B. 1194
S.B. 514	S.B. 729	S.B. 934	S.B. 1206

S.C.R. 48

S.C.R. 81

S.C.R. 83

S.C.R. 84

S.C.R. 85

SENATE BILL 796 WITH HOUSE AMENDMENT

Senator Williams called **S.B. 796** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1 - Watson

Amend **S.B. 796** as follows:

- (1) On line 21, page one, insert the following language between “dredges.” and “Each”: “If a vessel is towing another vessel, the towing and towed vessels combined may not have on board more than two dredges [~~one dredge~~].”
- (2) On line 10, page 2 delete the words “five” and insert “two” before “barrels”.
- (3) On page two, line 14, delete subsection (d) and substitute the following: “(d) If returning undersized oysters to the bed from which they were taken is impractical, the department may sell them.”

The amendment was read.

Senator Williams moved to concur in the House amendment.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE CONCURRENT RESOLUTION 1 WITH HOUSE AMENDMENT

Senator Harris called **S.C.R. 1** from the President’s table for consideration of the House amendment to the resolution.

The President laid the resolution and the House amendment before the Senate.

Floor Amendment No. 1 - Gibson

Amend **S.C.R. 1** by striking line 7, page 2, and substituting the following:

civil cases; and, be it further

RESOLVED, That nothing in this resolution may be construed as a waiver of any defense of law or fact available to the State of Texas or to any of its employees, agents, departments, agencies, or political subdivisions, but every defense is specifically reserved.

The amendment was read.

Senator Harris moved to concur in the House amendment.

The motion prevailed.

SENATE BILL 479 WITH HOUSE AMENDMENT

Senator Travis called **S.B. 479** from the President’s table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1 - Hall

Substitute the following for **S.B. 479**:

A BILL TO BE ENTITLED
AN ACT

relating to the issuance of special over-size permits by the State Department of Highways and Public Transportation authorizing the transportation of one or more portable building units over the state highways under certain conditions; adding a new Art. 6701a-2 to Title 116, Chapter 1, Revised Civil Statutes of Texas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. A New Article 6701a-2 is added to Title 116, Chapter 1, Revised Civil Statutes of Texas to read as follows:

"Art. 6701a-2. Portable buildings; movement of overlength and overwidth on highways; permits; fees

A. When any person, firm or corporation shall desire to move over a state highway one or more portable building units which in combination with the towing vehicle, are in excess of the legal length or width provided by law, the State Highway Department may, upon application, issue a permit for the movement of said equipment; provided, however, that the combined length of such portable building unit or units and the towing vehicle shall not exceed 80 feet. Provided, further that all cities and towns having a state highway within their limits shall designate to the State Highway Department the route within the city or town to be used by said equipment moving over the state highways. When so designated, the route shall be shown on side maps routing said equipment by the State Highway Department. In the event a route is not so designated by a city or town, the State Highway Department shall determine the route on the state highway for equipment within such cities or towns. No fee or license shall be required by any city or town for movement of said portable building units on the route of a state highway designated by the State Highway Department or on said special route designated by a city or town.

B. The application for a permit as provided for in this Article shall be in writing and contain the following:

(1) The make and model of the portable building unit or units, the over-all length and width, the make and model of the towing vehicle, the length and width of the towing vehicle and the over-all length and width of the combined portable building unit or units and towing vehicle.

(2) The highway or highways over which the same is to be moved, indicating the point of origin and destination.

(3) The same shall be dated and signed by the applicant.

C. Said special permits shall be issued by the Highway Department through the agent or agents in each county designated for that purpose as set out in Article 6701a, Section 1-a.

D. There shall also accompany the application for permit a fee of Five Dollars (\$5), which fee shall be by the State Highway Department deposited in the Treasury of the State of Texas to the credit of the State Highway Fund. Said fee shall be made by cashiers of certified check, postal or express money order.

E. Permits issued by the State Highway Department as provided for under this Article shall be substantially in the following form:

(1) It shall contain the name of the applicant and shall be dated and signed by the State Highway Engineer, a Division Engineer or a designated agent.

(2) It shall state the make and model of the portable building unit or units to be transported over the highways, the make and model of the towing vehicle,

the combined over-all length and width of the portable building unit or units and towing vehicle.

(3) It shall state the highway and/or highways over which the same is to be moved.

F. Said special permits shall be good for a period of ten (10) days and valid only for a single continuous movement.

G. Movements authorized by said special permits shall be made during daylight hours only."

SECTION 2. The importance of this legislation and the crowded condition of the calendars of both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Travis moved to concur in the House amendment.

The motion prevailed by the following vote: Ycas 31, Nays 0.

SENATE BILL 1098 WITH HOUSE AMENDMENTS

Senator Vale called **S.B. 1098** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - Watson

AMENDMENT NO. 1

Amend Senate Bill No. 1098 by deleting the existing Section 2 and replacing it with a new section 2 as follows:

SECTION 2. Section 8, Chapter 105, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6243f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. (a) Whenever any member of said departments shall have contributed a portion of his salary as provided by this Act, and shall have both contributed and served for a period of 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 or 30 years or more in either of said departments, the board shall, upon the application of any such member for retirement and a retirement pension, authorize a retirement pension to said applicant who retires after August 31, 1981, but before October 1, 1984, based on the average of the member's total salary excluding overtime pay for the highest five years of such member's pay at the rate of two percent thereof for each ~~full~~ year served, with fractional years prorated based on full months served, as such contributing member but the highest pension paid shall not exceed 60 percent of such highest five years salary average as of the date of retirement. The board shall compute the retirement pension of a member who retires after September 30, 1984, but before October 1, 1987, on the basis of the average of the member's total salary excluding overtime pay for the highest four years of the member's pay at the rate of two

percent for each year served, with fractional years prorated based on full months served, as a contributing member, but the pension may not exceed, as of the date of retirement, 60 percent of the average so determined. The board shall compute the retirement pension of a member who retires after September 30, 1987, in the same manner provided for computation of a pension for a member who retires on September 30, 1987, except that the average salary must be based on the highest three years of the member's pay excluding overtime pay. Provided, however, that any member of said departments qualifying for membership in the Pension Fund who is employed after the effective date of this Act must also have reached 50 years of age before being eligible for a retirement pension. No member shall ever receive any award from this fund for retirement until he has served at least 20 years in either or all of the departments and has also contributed the required amount of money for at least 20 years. In determining the number of years of service in a department, the member shall be given full credit for such time, or periods of time, said member was actively engaged in the military service, but only strictly in accordance with the provisions of Section 7(c) of this Act. Disciplinary suspensions of 15 days, or less, shall not be subtracted from a member's service time credit under this Act toward a retirement pension, provided that the member shall pay into the fund within 30 days after the termination date of each suspension a sum of money equal to the amount of money which would have been deducted from his salary during that period of suspension if it had not been for that suspension and upon such payment the city shall double match it.

(b) From and after January 1, 1959, whenever any member of said departments shall have served for a period of 30 years or more in either of said departments and shall have contributed a portion of his salary, as provided by this Act, for the same period of time, he shall be retired automatically from service upon attaining the age of 65 years and receive a pension based upon 60 percent of the average of his total salary excluding overtime pay for the same number of years as is currently provided for computations under Subsection (a) of this section, ~~highest five years of such member's pay~~ computed to the date of his retirement. Failure of such employee to comply with this provision shall deprive the member, and his widow and children and dependent parents, of any and all pensions and benefits herein provided.

(c) Provided, however, when a member in said departments attains the age of 65 years without having served for a period of 30 years in either of said departments and without having contributed a portion of his salary as provided by this Act for a period of 30 years, he may continue his service until his period of service and period of Pension Fund contributions shall cover 30 years.

Committee Amendment No. 2 - Watson

Amend Senate Bill No. 1098 by deleting the existing Section 4 and replacing it with a new Section 4 as follows:

SECTION 4. Section 11, Chapter 105, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6243f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. (a) In case of the death before or after retirement of any member of the Fire and Police Pension Fund of such city, who at the time of his death or retirement was a contributor to the said fund, and a member in good standing of said fund, leaving a widow, child or children under the age of 17 years, or an unmarried child or unmarried children 17 years of age or over but under 19 years of age currently attending a public or private educational institution, the widow and such child or children shall be entitled to receive from

the said fund an amount not to exceed one-half of the average total salary excluding overtime pay of the deceased member based on the same number of years of the member's pay as is currently provided for computations of pensions under Subsection (a) of Section 8 of this Act ~~his five highest paid years of service~~, or a theoretical average based on all of his years of service extended back to a date the same number of ~~five~~ years before the date of his death as is currently provided for computations of pensions under Subsection (a) of Section 8 of this Act, using (for the extended period) the actual base pay of a private as of that period in time, in each case, in making the computation; one-half of the widow's amount in the aggregate shall go to the eligible children and one-half for the widow.

(b) No child resulting from any marriage subsequent to the date of the retirement of said member shall be entitled to a pension under this Act. In case there are no children, the widow shall receive an amount not to exceed one-half of the average total salary excluding overtime pay of the deceased member computed as provided above if he has served less than the number of years currently provided for computations of pensions under Subsection (a) of Section 8 of this Act ~~five years~~. In case there is no widow, the children shall receive one-fourth of the average total salary computed as provided above; except that if the board determines upon investigation that the eligible child or children is or are destitute then the board may increase the pension to an amount not exceeding two-fifths of that average total salary. The amount awarded hereunder to any child or children shall be paid by the board of trustees to the legal guardian of said child or children. In no instance shall the amount received by the widow, child or children exceed a pension allowance of one-half of the average total salary excluding overtime pay of the deceased member computed as provided above, and in the event of the death of a member who retired upon 20 years service and less than 25 years service in no instance shall the amount received by the widow and child or children or the widow alone, exceed a total of two-fifths of that average total salary computed as provided above. A child or children alone in such case shall receive only one-fifth of that average total salary as computed above.

(c) A child who is so mentally or physically retarded as to be incapable of its own support to any extent shall, if otherwise qualified, enjoy the rights of children under 17 years of age regardless of age. Provided, further, that any pension paid hereunder to any mentally or physically retarded child or children shall be reduced to the extent that any of same shall receive any state pension or aid, including medicaid, or any state-funded assistance, regardless of whether or not the funds were made available to the state by the federal government. Provided, however, that in no other instance under this Act shall any child be entitled to any benefit after becoming 19 years of age.

(d) On the remarriage of the widow, either statutory or common law, or the marriage of any child granted such pension, the pension shall cease; provided, however, that if such remarried widow again becomes unmarried she shall then be entitled on application to 75 percent of her original pension for as long as she remains unmarried, but if, on application, retroactive payments are due the unmarried widow, in no case may payments be for a period greater than two years during which time the applicant was unmarried and before the date of application.

(e) No widow shall ever be entitled to more than one pension from this fund. No widow whose status as such resulted from any marriage subsequent to the date of the retirement of said member shall be entitled to a pension under this Act. The pension rights of qualified widows, children, and dependent parents of deceased members or pensioners who retired or died before the

effective date of the 1971 amendment hereto shall be computed on the basis of the base pay of a private in the department as of the date of such retirement or death. In the event of the death of a member who is under suspension at the time, including an indefinite suspension which has not yet become final, his widow and children shall enjoy the same rights as any other member hereunder.

(f) All widows, or other dependent beneficiaries under this Act, or guardians thereof, may be required by the board to file an affidavit annually as to their marital status, or that of their wards, or to give an affidavit to the board at other times when probable cause to suspect the possibility of remarriage exists. In the event of the failure or refusal of such widow or other beneficiary or guardian to file such affidavit, or in the event they should file an incomplete, incorrect, or false affidavit, the board may suspend pension payments to such widow, other beneficiary, or guardian indefinitely, and until there has been full compliance with the requests and orders of the board. This provision shall not be construed to be a limitation on or in derogation of any other powers, specific or implied, of the board as set out in Sections 2, 10, 13, and 14 of the Act, or elsewhere herein.

The amendments were read.

Senator Vale moved to concur in the House amendments.

The motion prevailed.

SENATE BILL 978 WITH HOUSE AMENDMENTS

Senator Howard called S.B. 978 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - Glossbrenner

Substitute the following for S.B. 978:

A BILL TO BE ENTITLED AN ACT

relating to industrial development corporations; their projects, management, powers, duties, privileges, and their funding and certain tax exemptions; validating the formation of certain corporations; amending the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), by amending Sections 2, 3, 4, 16, 21, 22, 23, 24, 25, 26, 27, 29, 31, 32, and 35 and Subsection (c), Section 7;

Subsection (a), Section 28; amending Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, by amending Section 1, Article 12.03 and by adding Section (HH) to Article 20.04 and creating the Texas Small Business Industrial Development Corporation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 2. Wherever used in this Act unless a different meaning clearly appears in the context, the following terms, whether singular or plural, shall mean as follows:

“(1) ‘Board of directors’ shall mean the board of directors of any corporation organized pursuant to the provisions of this Act.

“(2) ‘Commission’ shall mean the Texas Industrial Commission.

“(3) ‘Corporation’ shall mean any industrial development corporation ~~[or medical development corporation]~~ organized pursuant to the provisions of this Act.

“(4) ‘Cost’ as applied to a project ~~[or medical research project]~~ shall mean and embrace the cost of acquisition, construction, reconstruction, improvement, and expansion, including the cost of the acquisition of all land, rights-of-way, property rights, easements, and interests, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for one year after completion of construction whether or not capitalized, necessary reserve funds, cost of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of acquiring, constructing, reconstructing, improving, and expanding any such project ~~[or medical research project]~~, administrative expense and such other expense as may be necessary or incident to the acquisition, construction, reconstruction, improvement, and expansion thereof, the placing of the same in operation, and the financing or refinancing of any such project ~~[or medical research project]~~, including the refunding of any outstanding obligations, mortgages, or advances issued, made or given by any person for any of the aforementioned costs.

“(5) ‘City’ shall mean any municipality of the state incorporated under the provisions of (i) any general or special law or (ii) the home-rule amendment to the constitution.

“(6) ‘County’ shall mean a county ~~[political subdivision]~~ of this ~~[the]~~ state ~~[created and established under Article IX, Section 1, of the Texas Constitution]~~.

“(7) ‘District’ shall mean a conservation and reclamation district established under authority of Article XVI, Section 59, of the Texas Constitution.

“(8) ‘Governing body’ shall mean the board, council, commission, commissioners court, or legislative body of the unit.

“(9) ‘Industrial development corporation’ shall mean a corporation created and existing under the provisions of this Act as a constituted authority for the purpose of financing one or more projects.

“(10) ~~‘Medical development corporation’ shall mean a corporation created and existing under the provisions of this Act as a constituted authority for the purpose of financing one or more medical research projects.~~ “Federally Assisted New Communities” shall mean those federally assisted areas which have received or will receive assistance in the form of loan guarantees under Title X of the National Housing Act and a portion of the federally assisted area has received grants under Section 107 (a) (1) of the Housing and Community Development Act of 1974, as amended.

~~“(11) ‘Medical research project’ shall mean the land, buildings, equipment, facilities, and improvements (one or more) found by the board of directors to be required for medical research, irrespective of whether in existence or required to be acquired or constructed after the making of such finding by the board of directors.~~

~~“(12) ‘Project’ shall mean the land, buildings, equipment, facilities, and improvements (one or more) found by the board of directors to be required or suitable for the promotion of manufacturing development and expansion and for the [commercial or] industrial development and expansion of airport and port facilities, distribution centers, sewage or solid waste disposal facilities, air or~~

water pollution control facilities, and other industrial facilities, and facilities which are related to any of the foregoing, and in furtherance of the public purposes of this Act, all as defined in the rules of the commission [~~the promotion of employment, or for use by commercial, manufacturing, or industrial enterprises~~], irrespective of whether in existence or required to be acquired or constructed thereafter [~~after the making of such findings by the board of directors~~]. In addition, in blighted or economically depressed areas or federally assisted new communities located within a home-rule city or a federally designated economically depressed county of less than 50,000 persons according to the last federal decennial census, a project may include the land, buildings, equipment, facilities, and improvements (one or more) found by the board of directors to be required or suitable for the promotion of commercial development and expansion and in furtherance of the public purposes of this Act, or for use by commercial enterprises, all as defined in the rules of the commission, irrespective of whether in existence or required to be acquired or constructed thereafter. As used in this Act, the term blighted or economically depressed areas shall mean those areas within a city which by reason of the presence of a substantial number of substandard, slum, deteriorated, or deteriorating structures, or which suffer from a high relative rate of unemployment, or which have been designated and included in a tax incremental district created under Chapter 695, Acts of the 66th Legislature, Regular Session, 1979 (Article 1066d, Vernon's Texas Civil Statutes), or any combination of the foregoing, the city finds and determines, after a hearing, substantially impair or arrest the sound growth of the city, or constitute an economic or social liability and are a menace to the public health, safety, or welfare in their present condition and use. Notice of the hearing at which the city considers establishment of an economically depressed or blighted area shall be posted at the city hall prior to such hearing.

"(11) [~~(13)~~] 'Resolution' shall mean the resolution, order, ordinance, or other official action by the governing body of a unit.

"(12) [~~(14)~~] 'Unit' shall mean a city, county, or district which may create and utilize a corporation.

"(13) 'Bonds' includes bonds, notes, and other evidences of indebtedness."

SECTION 2. Sections 3 and 4, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), are amended to read as follows:

"Section 3. It is hereby found, determined, and declared:

"(1) that the present and prospective [~~health, safety,~~] right to gainful employment[~~;~~] and general welfare of the people of this state require as a public purpose the promotion and development of new and expanded [~~commercial,~~] industrial and[~~;~~] manufacturing[~~;~~ medical, and research] enterprises;

"(2) that the existence, development, and expansion of [~~commerce and~~] industry are essential to the economic growth of the state and to the full employment, welfare, and prosperity of its citizens;

"(3) that the means and measures authorized by this Act and the assistance provided in this Act, especially with respect to financing, are in the public interest and serve a public purpose of the state in promoting the [~~health,~~] welfare[~~;~~ and safety] of the citizens of the state[~~;~~ not only physically by encouraging medical research but also] economically by the securing and retaining of private industrial and[~~;~~ commercial,] manufacturing[~~;~~ and other] enterprises and the resulting maintenance of a higher level of employment, economic activity, and stability;

"(4) that community industrial development corporations in Texas have themselves invested substantial funds in successful industrial development

projects and have experienced difficulty in undertaking such additional projects by reason of the partial inadequacy of their own funds or funds potentially available from local subscription sources and by reason of limitations of local financial institutions in providing additional and sufficiently sizable first mortgage loans; and

“(5) that communities in this state are at a critical disadvantage in competing with communities in other states for the location or expansion of such enterprises by virtue of the availability and prevalent use in all other states of financing and other special incentives; therefore, the issuance of revenue bonds by corporations on behalf of political subdivisions of the state as hereinafter provided for the promotion and development of new and expanded ~~[commercial,] industrial and~~ manufacturing~~[, medical, and research]~~ enterprises to provide and encourage employment~~[, public health]~~ and the public welfare is hereby declared to be in the public interest and a public purpose.

“This Act shall be liberally construed in conformity with the intention of the legislature herein expressed.

“Section 4. Any number of natural persons, not less than three, each of whom is at least 18 years of age and a qualified elector of the unit may file with the governing body of a unit a written application requesting that the unit authorize and approve creation of a corporation to act on behalf of the unit. The governing body of the unit may not charge a filing fee for the application. If the governing body by appropriate resolution finds and determines that it is advisable that the corporation be authorized and created and approves the articles of incorporation proposed to be used in organizing the corporation, then the articles of incorporation for the corporation may be filed as hereinafter provided. A unit may authorize and approve creation of one or more corporations, provided that the resolution approving the creation of each corporation shall specify the public purpose or purposes of the unit which the corporation may further on behalf of the unit, which purpose or purposes shall be limited to the promotion and development of ~~[commercial,] industrial and~~ manufacturing~~[, and medical research]~~ enterprises to promote and encourage employment~~[, public health]~~ and the public welfare. No corporation may be formed unless the unit has properly adopted a resolution as herein described.”

SECTION 3. Subsection (c), Section 7, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

“(c) Upon the issuance of the certificate of incorporation, the corporate existence shall begin. After the issuance of the certificate of incorporation, the incorporation of the corporation shall be incontestable for any cause, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators and by the unit have been complied with and that the corporation has been incorporated under this Act.”

SECTION 4. Section 16, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

“Section 16. OFFICERS. The officers of a corporation shall consist of a president, one or more vice-presidents, a secretary, a treasurer, and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three years as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provisions, all officers shall be elected or appointed annually by the board of directors. One person may hold more than one office, except that the president may not hold the office of secretary.”

“(a) There is hereby created the Texas Small Business Industrial Development Corporation which shall act on behalf of the state to carry out the public purposes of this Act. The Texas Small Business Industrial Development Corporation shall be considered to be a corporation within the meaning of this Act, shall be organized and governed in accordance with the provisions of this Act, and shall have all of the powers, and shall be subject to all of the limitations, provided for corporations by this Act. For purposes of this Act, the state shall be considered to be the unit under whose auspices the Texas Small Business Industrial Development Corporation is created and the commission shall be considered to be the governing body. The articles of incorporation of the Texas Small Business Industrial Development Corporation shall be signed by at least three members of the commission, shall set forth the information requested by paragraphs (1) through (9), inclusive, of section 6 of this Act, and shall be approved by the commission, as governing body. The corporate existence of the Texas Small Business Industrial Development Corporation shall begin upon the issuance of a certificate of incorporation by the secretary of state. To the extent that the provisions of this Section 4a are inconsistent with other provisions of this Act, the provisions of this Section 4a shall control as to the creation, organization, administration, operation and affairs of the Texas Small Business Industrial Corporation.

SECTION 5. Sections 21, 22, and 23, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), are amended to read as follows:

“Section 21. Every unit is hereby authorized to utilize a corporation to issue bonds ~~[obligations]~~ on its behalf to finance the cost of projects ~~[or medical research projects]~~ to promote and develop ~~[commercial,]~~ industrial and ~~[,]~~ manufacturing~~[, medical, and research]~~ enterprises to promote and encourage employment~~[, the public health,]~~ and the public welfare. No unit is or shall be authorized to lend its credit or grant any public money or thing of value in aid of a corporation. The unit will approve all programs and expenditures of the corporation and annually review any financial statements of the corporation, and at all times the unit will have access to the books and records of the corporation.

“Section 22. Bonds issued under the provisions of this Act shall be deemed not to constitute a debt of the state, of the unit, or of any other political corporation, subdivision, or agency of this state or a pledge of the faith and credit of any of them, but such bonds shall be payable solely from the funds herein provided therefor from revenues. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the state, the unit, nor any political corporation, subdivision, or agency of the state shall be obligated to pay the same or the interest thereon and that neither the faith and credit nor the taxing power of the state, the unit, or any other political corporation, subdivision, or agency thereof is pledged to the payment of the principal of or the interest on such bonds. The corporation shall not be authorized to incur financial obligations which cannot be paid from proceeds of the bonds ~~[obligations]~~ or from revenues realized from the lease or sale of a project ~~[or medical research project]~~ or realized from a loan made by the corporation to finance or refinance in whole or in part a project ~~[or a medical research project]~~. The corporation when established and created pursuant to the terms of the Act shall be a constituted authority and an instrumentality (within the meaning of those terms in the regulations of the treasury and the rulings of the Internal Revenue Service prescribed and promulgated pursuant to Section 103 of the Internal Revenue Code of 1954, as amended) and shall be authorized to act on behalf of the unit under whose auspices it is created for the specific public

purpose or purposes authorized by such unit; but the corporation is not intended to be and shall not be a political subdivision or a political corporation within the meaning of the constitution and the laws of the state, including without limitation Article III, Section 52, of the Texas Constitution, and a unit shall never delegate to a corporation any of such unit's attributes of sovereignty, including the power to tax, the power of eminent domain, and the police power.

"Section 23. (a) The corporation shall have and exercise all of the rights, powers, privileges, authority, and functions given by the general laws of this state to nonprofit corporations incorporated under the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes); but to the extent that the provisions of the general laws are in conflict or inconsistent with this Act, this Act prevails. In addition [to the powers granted to such corporations elsewhere in the laws of Texas that are necessary for the corporation to achieve its purposes], the corporation shall have the following powers with respect to projects [and medical research projects] together with all powers incidental thereto or necessary for the performance of those hereinafter stated:

"(1) to acquire, whether by construction, devise, purchase, gift, lease, or otherwise or any one or more of such methods and to construct, improve, maintain, equip, and furnish one or more projects [~~and medical research projects~~] located within the state and within or partially within the limits of the unit under whose auspices the corporation was created or within the limits of a different unit where the governing body thereof requests the corporation to exercise its powers therein;

"(2) to lease to a lessee all or any part of any project [~~or medical research project~~] for such rentals and upon such terms and conditions as its board of directors may deem advisable and not in conflict with the provisions of this Act;

"(3) to sell by installment payments or otherwise and convey all or any part of any project [~~or medical research project~~] for such purchase price and upon such terms and conditions as its board of directors may deem advisable and not in conflict with the provisions of this Act;

"(4) to make secured or unsecured loans for the purpose of providing temporary or permanent financing or refinancing of all or part of the cost of any project [~~or medical research project~~], including the refunding of any outstanding obligations, mortgages, or advances issued, made, or given by any person for the cost of a project [~~or medical research project~~]; and to charge and collect interest on such loans for such loan payments and upon such terms and conditions as its board of directors may deem advisable and not in conflict with the provisions of this Act;

"(5) to issue [~~revenue~~] bonds for the purpose of defraying all or part of the cost of any project, [~~or medical research project and~~] to secure the payment of such bonds as provided in this Act, and to sell bonds at a price or prices determined by the board of directors or to exchange bonds for property, labor, services, material, or equipment comprising a project or incidental to the acquisition of a project, and those bonds may bear interest at any rate or rates determined by the board of directors, subject to the limitations set forth in this Act [~~provided that a corporation created under the auspices of a district may not issue revenue bonds for a medical research project~~];

"(6) as security for the payment of the principal of and interest on any [~~revenue~~] bonds issued and any agreements made in connection therewith, to mortgage and pledge any or all of its projects [~~and medical research projects~~] or any part or parts thereof, whether then owned or thereafter acquired, and to assign any mortgage and repledge any security conveyed to the corporation to secure any loan made by the corporation and to pledge the revenues and receipts therefrom;

"(7) to sue and be sued, complain and defend, in its corporate name;

"(8) to have a corporate seal and to use the same by causing it or a facsimile thereof to be impressed on, affixed to, or in any manner reproduced upon instruments of any nature required to be executed by its proper officers;

"(9) to make and alter bylaws not inconsistent with its articles of incorporation or with the laws of this state with the approval of the unit under whose auspices the corporation was created by resolution of the governing body for the administration and regulation of the affairs of the corporation;

"(10) to cease its corporate activities and terminate its existence by voluntary dissolution as provided herein; and

"(11) whether included in the foregoing or not, to have and exercise all powers necessary or appropriate to effect any or all of the purposes for which the corporation is organized which powers shall be subject at all times to the control of the governing body of the unit under whose auspices the corporation was created.

"(b) The corporation shall not have the power to own or operate any project ~~[or medical research project]~~ as a business other than as lessor, seller, or lender or pursuant to the requirements of any trust agreement securing the credit transaction. Accordingly, the lessee, purchaser, or borrower pursuant to any lease, sale, or loan agreement relating to a project shall be considered to be the owner of the project for the purposes of the application of any ad valorem, sales, and use taxes or any other taxes levied or imposed by this state or any political subdivision of this state. The purchase and holding of mortgages, deeds of trust, or other security interests and contracting for any servicing thereof shall not be deemed the operation of a project.

SECTION 6. Subsections (a), (b), and (c), Section 24, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), are amended to read as follows:

"(a) The commission shall approve the contents of any lease, sale, or loan agreement made under this Act. The commission shall prescribe rules and regulations setting forth minimum standards for project eligibility and for lease, sale, and loan agreements and guidelines with respect to the business experience, financial resources, and responsibilities of the lessee, purchaser, or borrower under any such agreement, but in no event shall the commission approve any agreement unless it affirmatively finds that the project sought to be financed is in furtherance of the public purposes of this Act ~~[the lessee, purchaser, or borrower has the business experience, financial resources, and responsibility to provide reasonable assurance that all bonds and interest thereon to be paid from or by reason of such agreement will be paid as the same become due]~~. Appeal from any adverse ruling or decision of the commission under this subsection may be made by the corporation to the District Court of Travis County. The substantial evidence rule shall apply. Rules, regulations, and guidelines promulgated by the commission and amendments thereto shall be effective only after they have been filed with the secretary of state.

"(b) The corporation may submit a transcript of proceedings in connection with the issuance of the bonds to the commission and request that the commission approve such bonds. On filing a request for the commission's approval of issuance of the bonds, the corporation shall pay to the commission a nonrefundable filing fee of \$1,500. If the commission refuses to approve such bond issue solely on the basis of law, the corporation may seek a writ of mandamus from the Supreme Court, and for this purpose the chairman of the commission shall be considered a state officer as provided in Article 1733, Revised Civil Statutes of Texas, 1925.

“(c) The commission may delegate to the executive director of the commission the authority to approve a lease, sale, or loan agreement made under this Act or bonds issued by a corporation ~~[bond issue]~~ or any documents submitted as provided herein.”

“(d) No corporation shall sell or offer for sale any bonds or other securities until a permit authorizing the corporation to offer and sell such securities has been granted by the securities commissioner under the registration provisions of The Securities Act, as amended (Article 581—1 et seq., Vernon's Texas Civil Statutes), except as the State Securities Board may exempt from registration by rule, regulation, or order. Appeal from any adverse decision of the securities commissioner or the State Securities Board shall be as provided by the Administrative Procedure and Texas Register Act, as amended (Article 6252—13a, Vernon's Texas Civil Statutes). The substantial evidence rule shall apply in all such appeals.

“(e) The commission by rule shall require corporations to file fee schedules and bond procedures. Bond counsel and financial advisors participating in an issue shall be mutually acceptable to the corporation and the user.”

“(f) The commission shall adopt rules and regulations governing programs for small businesses receiving loans guaranteed in whole or in part by the Small Business Administration or other federal agencies. The commission may also adopt rules and regulations governing the terms and conditions of loans by a corporation to banks or other lending institutions the proceeds of which are reloaned as permanent or temporary financing of a project.”

SECTION 7. Section 25, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

“Section 25. (a) The principal of and the interest on any bonds issued by a corporation shall be payable solely from the funds provided for such payment and from the revenues of the one or more projects ~~[or medical research projects]~~ for which the bonds were authorized. The bonds of each issue shall be dated, shall bear interest at such rate or rates ~~that are fixed, variable, floating, or otherwise,~~ shall mature at such time or times not exceeding 40 years from their date as may be determined by the board of directors, and may be made redeemable before maturity at the option of the board of directors at such price or prices and under such terms and conditions as may be fixed by the board of directors of the corporation prior to the issuance of the bonds. The bonds shall bear interest at such rate or rates as authorized by the provisions of Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 717K-2, V.A.C.S.), not to exceed fifteen percent.

“(b) The board of directors shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest. In cases where any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature for all purposes is the same as if he had remained in office until such delivery. The bonds may be issued in coupon or in registered form or both as the board of directors of the corporation may determine, and provisions may be made for the registration of any coupon bonds as to the principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The corporation may sell bonds at public or private sale and at an interest rate not to exceed that permitted by the constitution or laws of the state.

"(c) The proceeds of the bonds of each issue shall be used ~~[solely]~~ for the payment of all or part of the cost of or for the making of a loan in the amount of all or part of the cost of the project or projects ~~[or medical research project or medical research projects]~~ for which authorized as defined herein and shall be disbursed in such manner and under such restrictions, if any, provided in the resolution authorizing the issuance of the bonds or in the trust agreement securing the same. Bond proceeds may be used to pay all costs incurred in issuing the bonds, interest on the bonds for such time as may be determined by the board of directors of the corporation, and to establish reserve funds and sinking funds for the bonds. If the proceeds of the bonds of any series issued with respect to the cost of any project ~~[or medical research project]~~ shall exceed the cost of the project ~~[or medical research project]~~ for which the same shall have been issued, the surplus shall be deposited to the credit of the sinking fund for such bonds or used to purchase bonds in the open market.

"(d) Prior to the preparation of definitive bonds, the corporation may under like restrictions issue interim ~~[notes]~~ or temporary bonds with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. Bonds may be issued and lease, sale, and loan agreements entered into under the provisions of this Act without obtaining the consent or approval of any department, division, commission, board, bureau, or agency of the state except as otherwise provided herein. ~~[Bonds may not be issued for a medical project until compliance with the provisions of the Texas Health Planning and Development Act, Chapter 323, Acts of the 64th Legislature, Regular Session, 1975, as amended (Article 4418h, Vernon's Texas Civil Statutes).]~~

"(e) The principal of and interest on any bonds issued by the corporation shall be secured by a pledge of the revenues and receipts derived by the corporation from the lease or sale of the project ~~[or medical research project]~~ so financed or from the loan made by the corporation with respect to the project ~~[or medical research project]~~ so financed or refinanced and may be secured by a mortgage covering all or any part of such project ~~[or medical research project]~~, including any enlargements of and additions to such project ~~[or medical research project]~~ thereafter made. The resolution under which the bonds are authorized to be issued and any such mortgage may contain any agreements and provisions respecting the maintenance of the project ~~[or medical research project]~~ covered thereby, the fixing and collection of rents, purchase price payments or loan payments, the creation and maintenance of special funds from such revenues and the rights and remedies available in the event of default, all as the board of directors shall deem advisable and not in conflict with the provisions hereof. Each pledge, agreement, and mortgage made for the benefit or security of any of the bonds of the corporation shall continue effective until the principal of and interest on the bonds for the benefit for which the same were made have been fully paid.

"(f) ~~No [The governing body of the unit under whose auspices the corporation was created shall approve by written resolution any agreement to issue bonds adopted by a corporation, which agreement and resolution shall set out the amount and purpose of the bonds. Additionally, no]~~ issue of bonds, including refunding bonds, shall be ~~[sold and]~~ delivered by the corporation without a ~~[written]~~ resolution of the governing body adopted no more than 60 days prior to the date of ~~delivery~~ ~~[sale]~~ of the bonds specifically approving the resolution of the corporation providing for the issuance of the bonds.

"(g) Bonds issued under this Act, and coupons, if any, representing interest on the bonds, are securities as defined by Chapter 8, Business & Commerce Code, as amended, and are negotiable if issued in accordance with this Act."

SECTION 8. Sections 26 and 27, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), are amended to read as follows:

"Section 26. Each corporation is hereby authorized to provide by resolution for the issuance of its ~~[revenue]~~ refunding bonds for the purpose of refunding any bonds then outstanding, issued on account of a project ~~[or medical research project]~~, which shall have been issued under the provisions of this Act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds and, if deemed advisable by the corporation, for the additional purpose of financing improvements, extensions, or enlargements to the project ~~[or the medical research project]~~ in connection with which the bonds to be refunded shall have been issued or for another project. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties, and obligations of the corporation in respect to the same shall be governed by the provisions of this Act insofar as the same may be applicable. Within the discretion of the corporation, the refunding bonds may be issued in exchange for outstanding bonds or may be sold and the proceeds used for the purpose of redeeming outstanding bonds.

"Section 27. Any bonds issued under the provisions of this Act may be secured by a trust agreement by and between the corporation and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. Any such trust agreement may evidence a pledge or assignment of the lease, sale, or loan revenues to be received from a lessee or purchaser of or borrower with respect to a project ~~[or medical research project]~~ for the payment of principal of and interest and any premium on such bonds as the same shall become due and payable and may provide for creation and maintenance of reserves for such purposes. Any such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation, and insurance of the project ~~[or medical research project]~~ in connection with which such bonds shall have been authorized, and the custody, safeguarding, and application of all money. It shall be lawful for any bank or trust company incorporated under the laws of the state which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the corporation. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds and debentures of private corporations. In addition to the foregoing, any such trust agreement may contain such provisions as the corporation may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as a part of the cost of the operation of the project ~~[or medical research project]~~."

SECTION 9. Subsection (a), Section 28, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

"(a) Any agreement relating to any project ~~[or medical research project]~~ shall be for the benefit of the corporation. Any such agreement shall contain a provision that, in the event of a default in the payment of the principal of or the interest or premium on such bonds or in the performance of any agreement contained in such proceedings, mortgage, or instrument, such payment and

performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents, purchase price payments, and loan payments and to apply the revenues from the project ~~[or medical research project]~~ in accordance with such resolution, mortgage, or instrument."

SECTION 10. Section 29, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 29. A corporation may grant a lessee an option to purchase all or any part of a project ~~[or medical research project]~~ when all bonds of the corporation delivered to provide such facilities have been paid or provision has been made for their final payment~~[- provided during the time the bonds or interest thereon remains unpaid there is no failure to pay the lease rentals at the time and in the manner as the same become due, provided a payment shall be deemed paid when and as due if no event of default is declared and the payment is made within 15 calendar days of the date it was scheduled to become due]~~. The provisions of this law are procedurally exclusive for authority to convey or grant an option to purchase, and reference to no other law shall be required."

SECTION 11. Sections 31 and 32, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), are amended to read as follows:

"Section 31. Any bonds issued pursuant to this Act shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas. Such bonds ~~[or notes]~~ shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for said deposits to the extent of their face value when accompanied by all unmatured coupons appurtenant thereto.

"Section 32. The legislature finds, determines, and declares that the activities of a corporation created and organized under the provisions of this Act affect all the people of the unit under whose auspices it is created by assuming to a material extent that which might otherwise become the obligation or duty of such unit, and therefore such corporation is an institution of purely public charity within the tax exemption of Article VIII, Section 2, of the Texas Constitution. ~~[Accordingly, the corporation, all properties at any time owned by it, the income therefrom, and all bonds issued by it, their transfer, and the income therefrom shall be exempt from all taxation by the state.]~~"

SECTION 12. Section 35, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 35. Whenever the board of directors of the corporation by resolution shall determine that the purposes for which the corporation was formed have been substantially complied with and that all bonds theretofore issued ~~[and all obligations theretofore issued]~~ by the corporation have been fully paid, the members of the board of directors of the corporation shall, with the approval by written resolution of the unit under whose auspices the corporation was created, thereupon dissolve the corporation as hereinafter provided."

SECTION 13. Section (1), Article 12.03, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"(1) The franchise tax imposed by this chapter shall not apply to:

"(a) an insurance company; surety, guaranty, or fidelity company; transportation company; sleeping, palace car, and dining company now required to pay an annual tax measured by their gross receipts;

“(b) a corporation organized as a railway terminal corporation and having no annual net income from the business done by it;

“(c) a nonprofit corporation organized for the exclusive purpose of promoting the public interest of any county, city, or town, or other area within the state;

“(d) a nonprofit corporation organized for the purpose of religious worship;

“(e) a nonprofit corporation organized for the purpose of providing places of burial;

“(f) a nonprofit corporation organized for the purpose of holding agricultural fairs and encouraging agricultural pursuits;

“(g) a nonprofit corporation organized for strictly educational purposes, including a corporation organized for the sole purpose of providing a student loan fund or student scholarships;

“(h) a nonprofit corporation organized for purely public charity;

“(i) a savings and loan association chartered or authorized to operate as a building or savings and loan association under the provisions of the Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes);

“(j) an open-end investment company, as defined in and subject to the Federal Investment Company Act of 1940 (15 U.S. Code, secs. 80a-1 et seq.), and which also is registered as such investment company under The Securities Act, as amended (Articles 581-1 et seq., Vernon's Texas Civil Statutes);

“(k) a nonprofit corporation organized for the sole purpose of educating the public in the protection and conservation of fish, game, and other wildlife, as well as grasslands and forests;

“(l) a nonprofit water supply or sewer service corporation organized in behalf of cities or towns pursuant to Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933, as amended (Article 1434a, Vernon's Texas Civil Statutes);

“(m) a nonprofit corporation organized for the purpose of constructing, acquiring, owning, leasing, or operating a natural gas facility in behalf of and for the benefit of a city or residents of a city;

“(n) a nonprofit corporation organized for the purpose of providing convalescent homes or other housing for persons 62 years of age or older or for handicapped or disabled persons without regard to whether the corporation is for purely public charity;

“(o) a nonprofit corporation engaged exclusively in the business of owning residential property for the purpose of providing cooperative housing for any person or persons;

“(p) a corporation exempted from the payment of a franchise tax by the provisions of any of the laws of this state other than this chapter;

“(q) a nonprofit corporation which has been exempted from the federal income tax under the provisions of Section 501(c)(3), (4), (5), (6), or (7) of the Internal Revenue Code of 1954, as amended, as it existed on January 1, 1975; [and]

“(r) corporations engaged exclusively in the business of manufacturing, selling, or installing solar energy devices, which term, for the purposes of this chapter, means a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power or both by means of collecting and transferring solar-generated energy and includes mechanical or chemical devices having the capacity for storing solar-generated energy for use in heating or cooling or in the production of power; and

“(s) a nonprofit corporation organized under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes).”

SECTION 14. Article 20.04, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, is amended by adding Section (HH) to read as follows:

“(HH) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease, or rental of any taxable items to or the storage, use, or other consumption of taxable items by any nonprofit corporation formed under the Development Corporation Act of 1979 (Article 5190.6, Vernon’s Texas Civil Statutes), if the items are for the exclusive use and benefit of the nonprofit corporation. The exemption provided by this section does not apply to an item that is a project or a part of a project that is to be leased, sold, or lent by the nonprofit corporation.”

SECTION 15. All corporations for which certificates of incorporation were issued under the Development Corporation Act of 1979 (Article 5190.6, Vernon’s Texas Civil Statutes), before the effective date of this Act are validated in all respects and such a corporation may not be held invalid because the incorporation proceedings were not in accordance with the requirements of the Development Corporation Act of 1979.

SECTION 16. If a resolution is adopted by the board expressing its intent to issue bonds for the purpose of financing a project or other similar official action is taken by a corporation toward the issuance of such bonds, under the Development Corporation Act of 1979 (Article 5190.6, Vernon’s Texas Civil Statutes), and the regulations of the commission in effect before the effective date of this Act, the corporation may issue such obligations, and any obligations to refund the same, for the purpose of such project as if the Development Corporation Act of 1979 had not been amended by this Act.

SECTION 17. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Floor Amendment No. 1 - Von Dohlen

Amend C.S.S.B. 978 in the following manner:

(1) On page 12, line 7, before “and” by inserting: “or within the coastal waters adjoining the state”.

(2) On page 17, by striking lines 18-21.

(3) On page 4, line 6, insert the words “truck terminals” between the “,” and “and”;

(4) On page 4, line 22, insert the words “or other industrial” after the word “commercial”; and

(5) On page 4, line 26, add the following language before the word “those”: “a city which has been determined by the United States Department of Housing and Urban Development to be a distressed area, as defined by the Urban Development Action Grant program criteria.”.

The amendments were read.

Senator Howard moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **S.B. 978** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Howard, Chairman; Blake, Wilson, Leedom, Richards.

SENATE BILL 1116 WITH HOUSE AMENDMENT

Senator Ogg called **S.B. 1116** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1 - Blythe

Substitute the following for **S.B. 1116**:

A BILL TO BE ENTITLED AN ACT

relating to municipal pension systems in cities with a population of 1,200,000 or more; amending Chapter 358, Acts of the 48th Legislature, Regular Session, 1943, as amended (Article 6243g, Vernon's Texas Civil Statutes); and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 358, Acts of the 48th Legislature, 1943, as amended (Article 6243g, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. CREATION OF PENSION SYSTEM. There is hereby created a Municipal Pension System in all cities in this state having a population of one million two hundred thousand (1,200,000) or more according to the last preceding or any future Federal Census.

Sec. 2. DEFINITIONS. The following words and phrases when used in this Act are defined as follows, to wit:

(a) "Pension System" means the retirement ~~and~~ disability plans ~~[and Pension System]~~ for employees of cities coming within the provisions of this Act.

(b) "Member" means each city employee included in the Pension System provided for herein and becoming a member thereof.

(c) "Pension Board" or "Board" means the Pension Board of the Pension System created under this Act for the purpose of administering the Pension System.

(d) "Service" means the services and work performed by an "employee" as that term is defined herein.

(e) "Pension" means benefits payable to members out of the Pension Fund upon their becoming disabled or reaching retirement age as provided herein and becoming eligible for such payments.

(f) "Separation from Service" means cessation of work for the city, whether caused by death, discharge, resignation or any reason other than retirement.

(g) ~~["Separation Allowance" means the accumulation of payments made by the employee to the Pension Fund and returned to him upon his separation from service with the city before having become eligible for a pension.~~

[(h)] "Employee" ~~[The term "employee"]~~ means and includes any person whose name appears on a regular full time payroll of any such city and who is paid a regular salary for his services. Provided, that any elected official who becomes a member of the Pension System as permitted by this amended Act shall be considered to be and to have been an employee during the period of any service as an elected official.

(h) [(+)] "Salary" ~~["Monthly salary"]~~ means base pay, plus longevity pay, plus shift-differential pay, if any, paid to an employee and attributable to services rendered by the employee ~~[during a calendar month]~~ regardless of how actually paid.

(i) [(+)] "Prior Service" means all services and work performed as an employee prior to September 1, 1943.

(j) [(+)] "Previous Service" means all services and work as an employee, other than "prior service" as herein defined, which preceded a Group A member's current period of employment.

(k) [(+)] "Credited Service" means all services and work performed by a person as an employee, including prior service. However, in the case of a Group A member, if performed after September 1, 1943, such services and work must have been accompanied by corresponding contributions to the Pension Fund by the employee or legally authorized repayments thereof must have been made. Provided further, service preceding an interruption in service of ten years or longer is not "credited service".

Sec. 3. PERSONS ELIGIBLE UNDER THIS ACT. The following persons are eligible under this Act:

(a) Any person who is now a member of any such System under the terms of the original Act, as amended, and who does not make the election provided by Section 22 of this Act shall be a Group A member. The disability and benefit provisions of Sections 11 through 12 of this Act shall apply to Group A members.

(b) Any person who ~~[hereafter]~~ becomes an employee of such city for the first time after September 1, 1981, shall automatically ~~[and immediately at the beginning of his first full pay period]~~ become a Group B member of the Pension System as a condition of his employment except as hereinafter enumerated. Except as expressly stated otherwise, the eligibility and benefit provisions of Sections 22 through 31, inclusive, shall apply to such Group B members.

(c) Elected officials in office on September 1, 1981, [in good physical condition] shall have the option of becoming members of the Pension System. [They shall be subject to physical examinations and shall exercise the option by written notice to the Pension Board within ninety (90) days after the effective date of this amendatory Act or within ninety (90) days of the date of taking office, whichever is later.] Any member or former member of the Pension System who shall hereafter be elected to an office of said city shall have the right to reinstatement and shall receive credit for prior service and previous service as an employee on the same conditions as reemployed Group A members; except that no elected official who has retired or does retire from the Pension System on a service or disability retirement pension may receive pension payments while serving in an elective city office and such payments shall be suspended during the term of office. However, upon leaving office such payments shall be restored and credit given for the period served. Any elected official who is first elected after September 1, 1981, shall become a Group B member and receive credit for all previous service. [Any elected official

~~coming under the terms hereof who, thereafter, fails of election to said office or another elective office of the city, shall be considered as separated from the service, but if he is again elected or employed by such city within ten (10) years from the expiration of his term of office, he shall be subject to the other provisions of this Act concerning interruptions in service.]~~

Sec. 4. PERSONS NOT ELIGIBLE UNDER THIS ACT. Employees of such city who may not become members of the Pension System shall include:

(a) All quasi-legislative, quasi-judicial and advisory boards and commissions;[-]

(b) All part-time employees, as defined by such city, other than any elected officials whose service is made part-time by law or charter;

(c) All seasonal employees and all consultants and independent contractors;

(d) Employees covered by any other pension plan [~~Pension System~~] of such city to which the city contributes or persons drawing a pension from any such system, except to the extent that they are covered as a beneficiary.

Sec. 5. PENSION BOARD. (a) There is hereby created a Pension Board of the Pension System, in which Board there is hereby vested the general administration, management and responsibility for the proper and effective operation of the Pension System. The Board shall be organized immediately after its members have qualified and taken the oath of office and shall serve without compensation.

(b) The Pension Board shall be composed of seven (7) members as follows:

(1) The Mayor of the City, or the Director of the Civil Service Commission as his representative.

(2) The Treasurer of the City or person performing the duties of Treasurer.

(3) Three (3) employees of the city having membership in the Pension System and elected by the members of such System. No city department shall have more than one (1) representative. The persons now serving as employee members of the Board shall continue in office until the expiration of their terms, in cities having established systems under the original Act, as amended. The term of office of succeeding members so elected shall likewise be two (2) years and each such member shall continue to serve until his successor is duly elected and qualified. Vacancies occurring by death, resignation or removal of such representative shall be filled by appointments made by any two (2) of the Board members elected by the members of the Pension System. Such appointees shall serve for the remainder of the unexpired term of the member they replace. The first election of employee members in cities hereafter coming under this Act shall be held in such city at such time and place as shall be fixed by the governing body of the city, and to be not more than seventy-five (75) days from the date such city comes under the terms of this Act.

(4) Two (2) legally qualified taxpayers of such city, who have been residents of the county in which such city is located for the preceding five (5) years, to be chosen by the governing body of the city, being neither employees nor officers of such city. The two (2) members so chosen by the governing body of the city shall serve for two (2) years and until their successors are duly elected and qualified. Vacancies occurring by death, resignation, or removal of such representative shall be filled by the governing body of the city. Public members now on the Boards of cities having established Systems shall continue in office until the expiration of their terms.

(c) Each member of the Pension Board within ten (10) days after his appointment and election shall take an oath of office that so far as it devolves

upon him he will diligently and honestly administer the affairs of the Pension System and that he will not knowingly violate, or willingly permit to be violated, any of the provisions of this law.

(d) The Board shall elect from its membership annually a Chairman, Vice-Chairman and Secretary. Pursuant to the powers granted under the charter of such city, the Chief Administrative Officer of the city shall appoint one (1) or more employees whose positions and salaries shall be fixed by the governing body of the city and who, acting under direction of the Chief Administrative Officer of the city and City Treasurer, shall keep all of the records of and perform all of the clerical services for the Pension System. The salaries of such employees and all administrative expenses of the Pension System shall be paid by the city.

(e) Each member of the Board shall be entitled to one (1) vote in the Board. Four (4) concurring votes shall be necessary for a decision by the members at any meeting of the Board, and four (4) members shall constitute a quorum.

(f) A meeting of said Pension Board may be called at any time by the Chairman, Secretary, or by any four (4) members of such Pension Board.

(g) Notice shall be given to all members of such Pension Board unless waived in writing as to any proposed meeting by depositing of a written notice in the United States mail at least forty-eight (48) hours before such meeting, properly addressed to each such member. If a meeting is had, however, at which all of the members of the Board attend, no notice shall be necessary.

(h) No moneys shall be paid out of the Pension Fund except by warrant, check or draft signed by the Treasurer and countersigned by the Secretary, upon an order by said Pension Board duly entered in the minutes. Facsimile signatures may be authorized by the Board. Provided, however, the Board may by contract with any bank which is a depository for such Pension Fund authorize the bank to make deductions from the Pension Fund's account with such bank in connection with the purchase by the Board of authorized investments.

(i) The Pension Board shall determine the prior service to be credited to each member of the Pension System. The Board shall rely upon the personnel records of such city in determining such prior service credit or upon affidavits if the personnel records are incomplete.

(j) The Pension Board shall determine each member's credited service on the basis of the personnel and financial records of the city and the records of the Pension Board. The Board may permit any Group A member to pay into the Pension Fund and thereby obtain credit for any service with the city for which credit would otherwise be allowable under this amended Act save only for the fact that no contributions were made by such member with respect to such service, or the fact that contributions, although made with respect thereto, were thereafter refunded to such member as a separation allowance and not subsequently repaid. The following provisions shall apply to such payments:

(1) For service during the period September 1, 1943, to May 29, 1967, the employee shall pay a sum computed at the rate of Twelve Dollars (\$12) a month, and the city shall pay into the Pension Fund one and one-half (1-1/2) times the amount so paid by the employee.

(2) For service during the period May 29, 1967, to January 5, 1970, the employee shall pay a sum computed at the rate of three percent (3%) of his salary with the minimum payment being Twelve Dollars (\$12) a month, and the city shall pay into the Pension Fund one and one-half (1-1/2) times the amount so paid by the employee.

(3) For service during the period January 5, 1970, to September 1, 1971, the employee shall pay a sum computed at the rate of three percent (3%) of his

salary with the minimum payment being Twelve Dollars (\$12) a month, and the city shall pay into the Pension Fund an amount equal to eleven and one-quarter percent (11-1/4%) of such salary for the same period of time.

(4) For service during the period September 1, 1971, to January 1, 1976, the employee shall pay a sum computed at the rate of four percent (4%) of his salary, and the city shall pay into the Pension Fund an amount equal to thirteen and one-half percent (13-1/2%) of such salary for the same period of time.

(5) For service on and after January 1, 1976, the employee shall pay a sum computed at the rate of four percent (4%) of his salary, and the city shall pay into the Pension Fund an amount equal to eighteen percent (18%) of such salary for the same period of time.

(6) In addition to the amounts to be paid by the employee as specified above, the employee shall also pay interest on the same amounts at the rate of eight percent (8%) [~~six percent (6%)~~] per annum from the time the contributions would have been deducted, if made, or the time contributions were refunded as a separation allowance, as the case may be, to the time of repayment of such contributions into the Pension Fund.

Sec. 6. TREASURER OF PENSION FUND. The City Treasurer of any such city, or the person discharging the duties of the City Treasurer, is hereby designated as the Treasurer of said Pension Fund for said city and his official bond to said city shall operate to cover his position of Treasurer of said Pension Fund and his sureties shall be liable in connection with the Treasurer's actions pertaining to such Fund as fully as they are liable under the terms of said bond for the other actions and conduct of said Treasurer. All moneys of every kind and character collected or to be collected for said Fund shall be paid over to said Treasurer and shall be administered and paid out only in accordance with the provisions of this Act.

Sec. 7. CONTRIBUTIONS BY MEMBERS. Each Group A member of the Pension System shall make periodic contributions [~~thereto~~] during [~~the entire time of his~~] employment by the city in the amount of four percent (4%) of [~~his~~] salary. Such contributions shall be deducted by the city from the salary of each such member and paid to the Treasurer of the Pension Fund for deposit therein.

Sec. 8. CONTRIBUTIONS BY CITY. (a) Until January 1, 1983, such city shall pay monthly into such Pension Fund, from its general fund or other available source, an amount equal to eighteen percent (18%) of the total of the monthly salaries paid to Group A and Group B members for the same period of time, less an amount equal to the total amount of the employer's part of the payments made by the city for such period of time with respect to such members, to the federal government under the provisions of the Social Security Act and Federal Insurance Contributions Act, it being the intention hereof that the combined total of the payments made by such city, as an employer, with respect to such members, for social security and pension fund purposes shall at all times be eighteen percent (18%) of the total of all salaries paid to all such members.

(b) Beginning January 1, 1983, the city shall make periodic payments into the Pension Fund in an amount equal to the percentage contribution rate multiplied by the salaries paid to Group A and Group B members of the Fund. Such contribution rate expressed as a percentage shall be based on the results of actuarial valuations made at least every three (3) years, with the first such actuarial valuation to be made as of January 1, 1982. The city's contribution rate shall be comprised of the normal cost plus the level percentage of salary payment required to amortize the unfunded actuarial liability over a period of forty (40) years from January 1, 1983, calculated on the basis of an acceptable actuarial reserve funding method approved by the Pension Board. [In addition

to the payments provided for in the next preceding section, such city shall pay monthly into such Pension Fund, from its general fund or other available source, an amount equal to eighteen percent (18%) of the total of the monthly salaries paid to members for the same period of time, less an amount equal to the total amount of the employer's part of the payments made by the city for such period of time with respect to such members, to the federal government under the provisions of the Social Security Act and Federal Insurance Contributions Act, it being the intention hereof that the combined total of the payments made by such city, as an employer, with respect to such members, for social security and pension fund purposes shall at all times be eighteen percent (18%) of the total of all salaries paid to all such members.]

Sec. 10. INVESTMENT OF SURPLUS. [~~SURPLUS; INVESTMENT.~~
(a)] Whenever, in the opinion of the Board, there exists a surplus of funds in an amount exceeding the current demands upon the Fund, the Board shall invest such surplus funds in the manner provided for in Chapter 817, Acts of the 66th Legislature, 1979 (Article 6228n, Vernon's Texas Civil Statutes). [~~Whenever, in the opinion of the said Pension Board, there is on hand in said Pension Fund a surplus over and above a reasonably safe amount to take care of current demands upon such Funds, such surplus, or so much thereof as in the judgment of the said Pension Board is deemed proper, may be invested in the following:~~

~~[(1) In bonds or other interest bearing obligations and securities of the United States, the State of Texas, or any county, city or other political subdivision of the State of Texas;~~

~~[(2) In first lien real estate mortgage securities insured by the Federal Housing Administration under the National Housing Act of the United States, as amended from time to time;~~

~~[(3) In such corporation bonds, preferred stocks and common stocks as the Pension Board may deem to be proper investments for said Funds, provided, however, that not more than fifty percent (50%) of said Funds shall be invested at any given time in corporate stocks, nor shall investments in securities issued by any one (1) corporation be more than five percent (5%) of this Fund, nor shall more than five percent (5%) of the voting stock of any one (1) corporation be owned; and provided further, that stocks eligible for purchase shall be restricted to stocks of companies incorporated within the United States which have paid dividends for ten (10) consecutive years or longer immediately prior to the date of purchase and which, except for bank stocks and insurance stocks, are listed upon an exchange registered with the Securities and Exchange Commission or its successors, except that two percent (2%) of the Fund may be invested in common stocks that do not have a ten (10) year dividend record; or~~

~~[(4) In real property, divided or undivided, whether or not productive or unproductive of income, including, without limitation, investments of undivided interests in real property consisting of beneficial shares or interests in any commingled fund or any commingled trust which is established for the purpose of, and is primarily engaged in, investment in real property, such as, for example, a group or collective investment trust administered and controlled by a bank or trust company; provided that not more than ten percent (10%) of said Fund shall be invested at any given time in such real property.~~

~~[(b) In making each and all such investments said Pension Board shall exercise the judgment and care under the circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the safety of their capital. The said Board shall have authority to buy and sell any of its authorized investments.]~~

Sec. 11. RETIREMENT ON PENSION. (a) Any Group A member of such Pension System who has attained fifty (50) years of age and completed twenty-five (25) or more years of credited service, and any Group A member of such Pension System who has attained fifty-five (55) years of age and completed twenty (20) or more years of credited service, and any Group A member of the Pension System who has attained sixty (60) years of age and completed ten (10) or more years of credited service shall be eligible for a pension.

(b) The amount of the monthly pension [~~a month~~] for each such Group A member shall equal two percent (2%) of the member's average monthly salary multiplied by the total number of years of credited service of such member. For purposes of this Subsection, such average monthly salary shall be computed by adding together the thirty-six (36) highest monthly salaries paid to a member during his period of credited service and dividing the sum by thirty-six (36). Provided, however, that no Group A member's pension shall be more than eighty percent (80%) of such average monthly salary; and no Group A member's pension shall be less than Eight Dollars (\$8) a month for each year of credited service, or One Hundred Dollars (\$100) a month total pension, whichever is the greater amount.

(c) A member shall continue to accrue service credits, provided that in the case of a Group A member the required contributions are made to the fund, [~~benefits in the Pension System as long as he remains an employee,~~] regardless of his age. [~~Any present employee who was prohibited by previous amendments from accruing any additional benefits upon reaching seventy (70) years of age and prevented from making further contributions into the Pension Fund shall be permitted to continue the accrual of credited service for the period from age seventy (70) until retirement by repaying in one lump sum Twelve Dollars (\$12) a month for each month of service with the city from the date that he reached seventy (70) years of age to the effective date of this amendment and making regular employee contributions thereafter. Any present employee who failed to become a member because he had passed sixty (60) years of age at the time his employment commenced shall now be permitted to become a member by repaying, in one lump sum, Twelve Dollars (\$12) a month for each month of service with the city to the effective date of this amendment and making regular employee contributions thereafter. Any elected official who becomes a member of the Pension System as permitted by this amended Act may receive credit for any service as an elected official that preceded the effective date of this amended Act by paying, in one lump sum, Twelve Dollars (\$12) a month for each month of such preceding service and making regular employee contributions for any service with the city after the effective date of this amended Act. The city shall also contribute one and one half (1-1/2) times the amount so paid into the Fund by such employees and officials.~~]

(d) All Group A members who retire under this section or under Section 12 on or after January 1, 1976, shall have their pensions adjusted annually upward or downward in accordance with the percentage change in the Consumer Price Index for All Urban Consumers (CPI) for the preceding year [~~for Urban Wage Earners and Clerical Workers~~] as determined by the United States Department of Labor. The adjusted pension shall never be less than the basic pension which the retired member or survivor would otherwise be entitled to receive without regard to changes in the CPI [~~Consumer Price Index~~]. The adjusted pension shall never be greater than the amount of the retired Group A member's basic pension plus [~~cumulative~~] increases of not to exceed two percent (2%) annually, not compounded, notwithstanding a greater increase in the CPI [~~Consumer Price Index~~].

(e) All pensioners or the survivors of pensioners who retired prior to January 1, 1976, shall have their pensions adjusted on a one-time basis in an amount equivalent to one percent (1%) of their pension payment per year of retirement, subject to a minimum increase of Ten Dollars (\$10) per month. This postretirement adjustment shall be effective September 1, 1981.

Sec. 12. DISABILITY PENSIONS. (a) Any Group A member who has completed ten (10) or more years of service and who becomes totally disabled for further duty shall, regardless of age, be retired for "ordinary disability" and shall receive a monthly pension computed in accordance with Section 11(b).

(b) If any Group A member who becomes totally disabled for further duty by reason of a personal injury sustained or a hazard undergone as a result of, and while in the performance of, his duties at some definite place and at some definite time on or after the date of his becoming a Group A member, without serious and willful misconduct on his part, shall be retired for "accidental disability" and shall receive a monthly pension equal to twenty percent (20%) of his monthly salary on the date such injury was sustained or such hazard was undergone plus one percent (1%) of the above salary for each year of credited service; provided, that the total pension as so computed will not exceed forty percent (40%) of such monthly salary, or a monthly pension computed in accordance with Section 11(b), whichever is greater.

(c) By "totally disabled" is meant the sustaining of such disability as completely incapacitates a member from performing the usual and customary duties which he has been performing for such city or other full time duties that could be performed by such member. Before any disability pension is allowed, the Pension Board shall require such medical examination and such other evidence as it may see fit to establish such total disability, as above provided.

(d) Any Group A member receiving a disability pension in accordance with this section or any Group B member receiving a disability pension in accordance with Section 25 of this Act ~~[on account of "ordinary" or "accidental disability"]~~ shall, each April 1 ~~[January 1]~~, submit a sworn affidavit stating his earnings for the previous calendar year, if any, obtained from any gainful occupation. If the earnings together with the disability pension being received by any member exceed the monthly salary of such member at the time of his separation from service, the Pension Board shall have authority to reduce the amount of pension. Failure to submit an affidavit of earnings or submission of a materially false affidavit shall be cause for suspension of the pension upon proper action by the Pension Board.

No member shall receive ~~[payment of]~~ a disability and service pension ~~[under Section 11 and this section]~~ at the same time. However, in the event a member who is already eligible for retirement is granted a ~~[under Section 11 should retire for]~~ disability pension ~~[under this section,]~~ and, thereafter, although his disability ceases to exist, he does not return to work for the city, he shall be entitled ~~[to continue]~~ to receive a service pension ~~[under Section 11]~~, calculated in accordance with Section 11 for Group A members and Section 24 for Group B members. Such service pension shall be based on actual service up to the time of disability ~~[the length of service and the schedule of benefits for Section 11 which would have been applicable at the time of his original retirement for disability]~~.

When any member has been retired for ~~[ordinary or accidental]~~ disability, he shall be subject at all times to re-examination by the Pension Board and shall submit himself to such further examination as the Pension Board may require. If any such member shall refuse to submit himself to any such examination, the Pension Board may, within its discretion, order said payments stopped. If such a member who has been retired under the provisions of this Section should

thereafter recover so that in the opinion of the Pension Board he is able to perform the usual and customary duties formerly handled by him for said city, and such member is reinstated or tendered reinstatement to the position he had at the time of his retirement, then the Pension Board shall order such pension payments stopped.

Sec. 13. MONTHLY ALLOWANCE TO WIDOWS AND CHILDREN. If any Group A member of the Pension System, as herein defined, shall die from any cause whatsoever after having completed ten (10) years of service with the city, or if, while in the service of the city, any such member shall die from any cause growing out of or in consequence of the performance of his duty, or shall die after he has been retired on pension because of length of service or disability and shall leave a surviving widow or widower, or a child or children under the age of eighteen (18) years, or both such widow or widower and child or children, said Board shall order paid monthly allowances as follows:

(a) To the widow or widower, so long as she or he remains a single person and provided she or he shall have married such member prior to her or his retirement, a sum equal to one-half (1/2) of the retirement benefits that the deceased Group A member would have been entitled to had she or he been totally disabled at the time of her or his retirement or death, but the allowance payable to any such widow or widower shall not in any event be less than Fifty Dollars (\$50) a month.

(b) To the guardian of each child the sum of Sixteen Dollars (\$16) a month until such child reaches the age of eighteen (18) years.

(c) In the event the widow or widower dies after being entitled to her or his allowance as provided, or in the event there be no widow or widower to receive such allowance, the amount to be paid to the guardian of any child or children under the age of eighteen (18) years shall be increased to the sum of Thirty-Two Dollars (\$32) a month for each such child; provided, however, that the total allowance to be paid all beneficiaries or dependents, as herein provided, shall not exceed the monthly pension that would have been paid the Group A member ~~[pensioner]~~ had he continued to live and retire on pension at the date of his death. Allowances or benefits payable to any minor child shall cease when such child becomes eighteen (18) years of age or marries, provided that when there are only children to collect a pension as beneficiaries, if at the time the last child reaches eighteen (18) years of age, the amount the employee contributed has not been paid out in pensions, the balance shall be refunded to the children. The ~~[By the]~~ term "guardian," as used herein, shall mean ~~[be meant]~~ the surviving widow or widower with whom the child or children reside, or any guardian appointed by law, or the person standing in "loco parentis" to such dependent minor child responsible for his or her care and upbringing.

Sec. 14. REFUND OF CONTRIBUTIONS. If any member's employment by the city is terminated for other than total and permanent disability arising as a result of or as a consequence of the performance of his duties prior to his having completed ten (10) years of service with the city, he shall not be paid any pension whatsoever, but he shall receive the amount paid by him into the Pension Fund by way of salary deduction without interest as provided in Section 16 of this Act. In the event of his death, if there are no widow or children to receive the allowance provided for in Section 13 above, his beneficiary, and if none, his estate, shall receive the said amount.

Sec. 15. COMPUTING PERIOD OF SERVICE. In the computation of the years of service of an employee who is a Group A member, ~~[required for the receipt of a pension by a retiring member,]~~ the following rules shall apply:

(a) Interruptions of service of three (3) months or less shall be treated as continuous service, but such employee ~~[the member]~~ shall be required to pay

into the Pension Fund any contributions withdrawn at the time of separation plus the amount of the employee contributions allocable to each such period of interruption.

(b) If there have been interruptions of service of more than three (3) months and less than ten (10) years, no credit shall be allowed for the period of an interruption but credit shall be allowed for previous service and prior service if (1) such [the] employee shall have repaid to the Pension Fund within three (3) months after resumption of service all moneys theretofore withdrawn by him upon separation from service, plus interest thereon at the rate of eight percent (8%) [six percent (6%)] per annum, or (2) if such [the] employee shall at any time have made payments to the Pension Fund which, under then existing provisions of law, entitled him to credit for previous service.

(c) If such [any] employee has been out of service for a period longer than ten (10) years, no credit for any service preceding the out-of-service period shall be allowed.

Sec. 16. TERMINATION OF EMPLOYMENT; DEATH; REEMPLOYMENT. When any Group A member [~~of such Pension System~~] shall leave the employment of such city, either voluntarily or involuntarily, before becoming eligible for a retirement or disability pension, he shall thereupon cease to be a member of such Pension System, and shall have refunded to him all of the payments made by him into said Pension Fund by way of salary deductions, without interest, subject to the following provisos:

(a) If such member has completed twenty-five (25) or more years of service at the time of termination of employment but has not yet attained the age of fifty (50) years he may, by written notice to the Pension Board, make an irrevocable election to leave his contributions in the Pension Fund, in which event he shall, upon reaching the age of fifty (50) years, be entitled to a pension on the basis of the schedule of benefits for retiring Group A members that was in effect at the time of his separation from the service.

(b) If such member has completed twenty (20) or more years of service at the time of termination of employment but has not yet attained the age of fifty-five (55) years he may, by written notice to the Pension Board, make an irrevocable election to leave his contributions in the Pension Fund, in which event he shall, upon reaching the age of fifty-five (55) years, be entitled to a pension on the basis of the schedule of benefits for retiring Group A members that was in effect at the time of his separation from service.

(c) If such member has completed fifteen (15) or more years of service at the time of termination of employment but has not yet attained the age of sixty (60) years he may, by written notice to the Pension Board, make an irrevocable election to leave his contributions in the Pension Fund, in which event he shall, upon reaching the age of sixty (60) years, be entitled to a pension on the basis of the schedule of benefits for retiring Group A members that was in effect at the time of his separation from service.

(d) If, while still employed by the city, whether eligible for a pension or not, a Group A member dies, then, unless the provisions of Section 13 hereof are applicable, all of his rights in the Pension Fund shall be satisfied by the refund to his designated beneficiary, if any, or if none, to his estate, of all the payments theretofore made by him into the Pension Fund by way of employee's contributions, without interest.

(e) The provisions of Section 13 concerning payments to widows, widowers and children shall apply in the case of any former Group A member who has made the election permitted by Subsection (a), (b) or (c), above, and who dies before reaching the age at which he would be entitled to a pension. If there be no surviving widow, widower or children, then all of such member's

rights in the Pension Fund shall be satisfied by the refund to his designated beneficiary, if any, or if none, to his estate, of all the payments theretofore made by him into the Pension Fund by way of employee's contributions, without interest.

(f) It is not the intention of this Amendatory Act to change the status of any former member of the Pension System whose services with the city were terminated under a previous Act. Refunds of contributions above provided for shall be paid such departing member, his beneficiary or estate in a lump sum, but if, in the opinion of the Pension Board, the funds on hand are too low to justify such lump sum payment, said payment shall be refunded on a monthly basis in such amounts as may be determined by the Pension Board.

(g) When a Group A member has left the service of such city, as aforesaid, and has therefore ceased to be a member of such Pension System, if such person shall thereafter be reemployed by the city on or after September 1, 1981, he shall thereupon become a Group B member ~~[be reinstated as a member of such Pension System, provided he is in good physical and mental condition as evidenced by a written certificate by a duly licensed and practicing physician residing in said city, satisfactory to the Pension Board]~~. Previous service of such member with such city shall not be counted toward his retirement pension unless such member returns to the service of the city within ten (10) years from his separation therefrom ~~[and also shall, within three (3) months after his reemployment by the city, repay in one lump sum to such Pension Fund all moneys withdrawn by him upon his separation from the service plus interest thereon at the rate of six percent (6%) a year from the date of such withdrawal. The three (3) months limitation above mentioned is subject, nevertheless, to the Board's authority as expressed in Section 5(j)].~~

(h) If any Group A member of the pension system, after having made the election permitted by Subsection (a), (b) or (c), above, at the time of separation from the service of the city, shall be reemployed by the city before September 1, 1981, and before becoming eligible to receive pension benefits, the following provisions shall apply to the computation of the pension due such member upon his subsequent retirement:

1. The portion of such member's pension attributable to his period of credited service accrued prior to his making the aforesaid election shall be calculated on the basis of the schedule of benefits for retiring members that was in effect at the time said election was made. However, in the case of any such member who made the election permitted by Subsection (a), (b) or (c), above, prior to September 1, 1981, the portion of such member's pension attributable to service prior to the election shall be based on such member's average monthly salary at the time of such subsequent retirement, only if the member has completed five (5) years of continuous service from the date of reemployment.

2. The portion of such member's pension attributable to his period of credited service accrued after his reemployment by the city shall be calculated on the basis of the schedule of benefits for retiring members that is in effect at the time of such subsequent retirement.

Sec. 17. REDUCTION OF BENEFITS; DISSOLUTION OF SYSTEM.

(a) In the event said Pension Fund becomes seriously depleted in the opinion of the Pension Board, said Pension Board may proportionately and temporarily reduce the benefits of all pensioners and beneficiaries, but such reductions shall thereafter be paid to such pensioners and beneficiaries, as and when said Fund is, in the opinion of the Pension Board, sufficiently reestablished to do so. Should the reserve and surplus in the Pension Fund become exhausted and, at such time, the outgo of the Pension Fund exceeds the income thereto, then, in such event, the governing body of the city shall have the right, by ordinance

duly passed, to dissolve the Pension System and require liquidation thereof without any liability to the city whatsoever.

(b) Any member or survivor receiving a retirement pension may, at his option, receive any smaller retirement pension after properly requesting same in writing to the Pension Board.

(c) In the event any member dies within three (3) years from his retirement date and leaves no widow or minor children, his estate shall be entitled to payment in a lump sum ~~of~~ the excess, if any, of his accumulated contributions to the date of his retirement over the aggregate monthly benefit payments received by the member.

Sec. 18. LEGAL SERVICES. The City Attorney of such city shall handle all legal matters for the Pension System which are referred to him by the Pension Board or city without additional compensation therefor. The Pension Board may, however, if it deems necessary, employ outside legal advice to the exclusion of, or to assist, the City Attorney, and pay reasonable compensation therefor out of said Pension Fund.

Sec. 19. ACTUARY. ~~The [Such] Pension Board shall [may, at its discretion, from time to time,] employ an actuary which cost shall be paid for by the city. The actuary shall prepare an actuarial valuation and report to the Pension Board at least every three (3) years. [The governing body of the city may require that an actuarial study, survey and report be made of such Pension System not more than once every five (5) years.]~~

Sec. 20. EXEMPTION FROM EXECUTION, ATTACHMENT OR OTHER WRIT. No portion of any such Pension Fund, either before or after its order of disbursement by said Pension Board, and no amounts due or to become due any beneficiary or pensioner, under this Act shall ever be held, seized, taken, subjected to, detained, or levied upon by virtue of any execution, attachment, garnishment, injunction, or other writ, and no order or decree, or any process or proceeding whatsoever, shall issue out of or by any court of this state for the payment or satisfaction in whole or in part out of said Pension Fund, of any debt, damage, claim, demand, or judgment against any such members, pensioners, dependents, or any person whomsoever, nor shall such Pension or any part thereof, or any claim thereto, be directly or indirectly assigned or transferred and any attempt to transfer or assign the same or any part thereof, or any claim thereto, shall be void. Said Fund shall be sacredly held, kept, and disbursed for the purposes provided by this Act and for no other purpose whatsoever, except that the pensioner, survivor, or dependent, at his discretion, may have deducted from his pension the monthly premium cost of the city's group hospitalization and life insurance plan.

Sec. 21. MEMBERS IN MILITARY SERVICE. Members of the Pension System engaged in active military service shall not be required to make the monthly payments into the Pension Fund provided for in this Act, nor shall they lose credit for any previous years of service with the city as a result of ~~caused by~~ such military service. Furthermore, the city shall not be required to make any monthly payments into the Pension Fund for ~~on~~ such member while he is engaged in the military service. Any member who engages in active military service shall, if he returns to employment by the city within three (3) months after termination of such service, receive credit for his time in such service and shall immediately at the beginning of his first full pay period begin repaying to the Pension Fund the equivalent of all monthly contributions for the total number of months elapsed since he went into such service, such repayment to be completed within twenty-four (24) months of reemployment, and the city shall pay into the Fund one and one-half (1-1/2) times such amount. Credit for military service shall be limited to twenty-four (24) months, unless such period is extended by the Pension Board.

Sec. 22. GROUP B MEMBERSHIP, SERVICE REQUIREMENTS, AND BENEFIT PROVISIONS ~~[EMPLOYEES ON RETIREMENT WHEN ACT ENACTED]~~. (a) Any employee initially hired or reemployed after September 1, 1981, shall become a Group B member. On or after September 1, 1981, any Group A member may irrevocably elect to become a Group B member effective January 1, 1982, by filing an election form with the Board. Such election must be made prior to December 1, 1981. A Group A member who makes such an election shall be refunded his or her accumulated contributions without interest and shall not be required to make further contributions as a Group B member. Such refund shall be made by March 1, 1982. Upon the effective date of the election, all rights as a Group A member shall be extinguished; however, pensions and benefits shall be based on total credited service as a Group A and Group B member. Any former Group A member who was entitled to purchase service credit for previous employment under the provisions of this Act in effect prior to the date of this amendment and who becomes a Group B member may purchase such service credit at any time after September 1, 1981, by paying into the fund an amount equal to eight percent (8%) interest on any contributions previously withdrawn for the period from the date of withdrawal to the date of purchase.

(b) The Board shall prepare and print a brochure explaining the effects of the election provided for by the preceding subsection. Such brochure shall fully describe the benefit alternatives under both Group A and Group B coverage and shall be designed to provide sufficient information upon which an employee can base his or her decision to elect Group B coverage. The Board shall designate one or more individuals who shall serve as contact persons for any employee or group of employees who may require additional information.

The election of Group B coverage shall be on a form approved by the Board and shall be notarized upon its execution by the member. The election form shall specifically state that the employee has read and understood the information supplied by the Board and understands the consequences of her or his decision. Once made such election shall be irrevocable. ~~[Subject to the provisions of Section 17, any former employee of any city now on retirement by such city shall hereafter be paid at the same rate he is now receiving and it is not the intention of this Act to change the status of any member now on Pension by such city. Provided, however, that the minimum pension payable to retired employees shall be One Hundred Dollars (\$100) a month, and as to those surviving spouses of former employees, who receive pensions under Section 13 of this Act, the minimum pension shall be Fifty Dollars (\$50) a month, it being further provided that this provision shall not apply retroactively to any pension payments previously made to any of such persons.]~~

Sec. 23. ELIGIBILITY FOR PENSION ~~[CITIES WITH PENSION PROVISIONS IN THEIR CHARTER]~~. (a) A Group B member shall become eligible to receive a normal pension after he has terminated employment, beginning with the month when he has ten (10) years of credited service and has attained age sixty-two (62).

(b) A Group B member shall become eligible to receive an early pension after he has terminated employment, beginning with the month when he has twenty (20) years of credited service and has attained age fifty-five (55).

(c) A Group B member who has ten (10) years of credited service and terminates employment shall have a vested right to a normal pension payable beginning with the month when he has attained age sixty-two (62). ~~[The terms of this Act shall not apply to any city operating a municipal employees pension program under the terms and provisions of its charter.]~~

~~[Sec. 23a. CREATION OF PENSION SYSTEM FOR EMPLOYEES TRANSFERRED EN MASSE TO NEWLY CREATED GOVERNMENTAL SUBDIVISION. Notwithstanding any other provision of this Article 6243e should a governmental subdivision which has been or may be formed in the future to assume and perform the function of a department, agency, or other establishment which was formerly operated by the city or jointly by the city with another governmental subdivision and all employees who performed services for such a department, agency or other establishment were transferred en masse to the newly created governmental subdivision formed to assume and perform the function of the department, agency or other establishment for which such employees performed services prior to their transfer, then such newly created governmental subdivision through its governing body may elect to create a pension system for such transferred employees within ninety days of the enactment of this amendatory act or within ninety days of the creation of such newly created governmental subdivision, whichever occurs later, and the Pension Board of the Pension System established by the city shall, within thirty days after being notified by the governing body of the newly created governmental subdivision of its intention to create a pension system for such transferred employees, transfer to such governing body in cash and/or in obligations of the United States Government of equal fair market value at date of transfer all contributions made by the transferred employees to the Pension System of the city prior to their transfer, who were not eligible and had not elected benefits under the Pension System at the time of transfer, together with all contributions made by the city and/or any other governmental subdivision to the Pension System of the city on behalf of such transferred employees, all without interest. Such payment by the Pension Board of the Pension System of the city shall be in full satisfaction of all claims such transferred employees may have on the Pension System of the city. If the governing body of the newly created governmental subdivision elects not to create, or fails to elect to create, a pension system for the transferred employees within ninety days of the enactment of this amendatory act or within ninety days of the creation of such newly created governmental subdivision, whichever occurs later, then the Pension Board of the Pension System of the city shall refund to each of the transferred employees who was not eligible and had not elected benefits under the Pension System of the city at the time of transfer his own contributions, without interest, in satisfaction of any claim such transferred employee may have on the Pension System of the city. The rights of any transferred employee who was eligible at the time of transfer and had timely elected a benefit under the Pension System of the city shall not be affected by this Section and such employee shall be entitled to all benefits which had accrued to him or her under the Pension System of the city at the time of transfer without regard to this amendatory act.]~~

~~Sec. 24. AMOUNT OF PENSION [EFFECTIVE DATE OF INCREASE IN CONTRIBUTIONS]. (a) The amount of the normal pension payable to a retired Group B member shall be one and one-quarter percent (1-1/4%) of average monthly salary multiplied by the number of years (not to exceed forty (40)), taken to the nearest twelfth (12th) of a year, in the period of credited service. Average monthly salary shall be the average of the thirty-six (36) highest monthly salaries during a member's period of credited service.~~

~~(b) The amount of the early pension payable to a retired Group B member shall be equal to the normal pension reduced by one-half of one percent (1/2%) for each month the member is less than age sixty-two (62) at retirement. The increase in employee and city contributions resulting from the adoption of this amended Act, as provided in Section 7 and Section 8 hereof,~~

shall become effective at the beginning of the next regular pay period of such city occurring after the expiration of ten (10) days from the effective date of this Act.

Sec. 25. DISABILITY ELIGIBILITY. (a) A Group B member who becomes disabled by reason of a personal injury sustained or a hazard undergone as a result of, or while in the performance of, his duties at some definite place and at some definite time on or after the date of his becoming a Group B member, without serious and willful misconduct on his part, shall be eligible to receive a service-connected disability pension.

(b) A Group B member who has ten (10) years of credited service and who becomes disabled, but is not eligible for a service-connected disability pension, shall be eligible to receive an ordinary disability pension.

Sec. 26. DISABILITY PENSION AMOUNT AND DURATION. The disability pension shall equal the member's accrued normal pension, but in the case of a service-connected disability shall not be less than twenty percent (20%) of the member's salary at the time of disablement. The pension shall be paid for the first twenty-four (24) months following disablement while the member is unable to perform the duties of his position. The pension shall be continued beyond twenty-four (24) months while the member is unable to engage in any occupation for which he is reasonably suited by training or experience.

Sec. 27. DISABILITY REVIEW. The provisions of Section 12(d) of this Act shall apply to any Group B member receiving a disability pension.

Sec. 28. DEATH BENEFIT. (a) The surviving spouse and/or dependent child or children of a Group B member shall be eligible for a death benefit, if the member dies:

(1) from any cause while in service of the city and has ten (10) years of credited service; or

(2) from any cause while in service of the city in consequence of the performance of his duty.

(b) For the surviving spouse the amount of the death benefit shall equal one-half (1/2) of the pension the member would have received if the member had been disabled at the time of death, but not less than Fifty Dollars (\$50) per month. The benefit shall be paid while the surviving spouse remains a single person, but shall not be paid if the surviving spouse married the member after the member's retirement.

(c) If there is a surviving spouse, each dependent child shall receive a death benefit equal to ten percent (10%) of the pension the member would have received if the member had been disabled at the time of death, to a maximum of twenty percent (20%) for all dependent children.

(d) If there is no surviving spouse, each dependent child shall receive a death benefit equal to twenty percent (20%) of the pension the member would have received if the member had been disabled at the time of death, to a maximum of forty percent (40%) for all dependent children.

Sec. 29. RETIREMENT OPTIONS. (a) A Group B member may elect to have his normal or early pension paid under one of the options provided by Subsection (b). Such election must be made at least one (1) year prior to retirement.

(b) The option may be one of the following actuarially equivalent amounts:

OPTION 1: A reduced pension payable to the member, then upon the member's death, one-half (1/2) of such pension paid to the member's designated survivor, for life.

OPTION 2: A reduced pension payable to the member, then upon the member's death, such pension paid to the member's designated survivor, for life.

OPTION 3: A reduced pension payable to the member and if the member dies within ten (10) years, such pension paid to the member's designated survivor for the balance of the ten (10) year period.

Sec. 30. BREAK IN SERVICE: REEMPLOYMENT. Any Group B member who terminates employment before completing ten (10) years of credited service shall have all service credit canceled at the time of termination. However, if such member is reemployed by the city within one (1) year of the date of termination then all credit for previous service shall be restored. Further, any member who is reemployed by the city more than one (1) year but less than ten (10) years from the date of termination shall receive credit for one (1) year of prior service for each year of subsequent service, provided, however, that no employee may earn credit for more than ten (10) years of prior service.

Sec. 31. POSTRETIREMENT ADJUSTMENTS. All pensions shall be adjusted annually upward or downward in accordance with the percentage change in the Consumer Price Index for All Urban Consumers (CPI) for the preceding year as determined by the United States Department of Labor. The adjusted pension shall never be less than the basic pension which the retired member or survivor would otherwise be entitled to receive without regard to changes in the CPI. The adjusted pension shall never be greater than the basic pension plus increases of not to exceed four percent (4%) annually, not compounded, notwithstanding a greater increase in the CPI.

Sec. 32. EMPLOYEES ON RETIREMENT WHEN ACT ENACTED. Subject to the provisions of Section 17, any former employee now on retirement by such city shall hereafter be paid at the same rate he is now receiving and it is not the intention of this Act to change the status of any member now on pension by such city. Provided, however, that the minimum pension payable to retired employees shall be One Hundred Dollars (\$100) a month, and as to those surviving spouses of former employees who receive pensions under Section 13 of this Act, the minimum pension shall be Fifty Dollars (\$50) a month, it being further provided that this provision shall not apply retroactively to any pension payments previously made to any of such persons.

Sec. 33. CITIES WITH PENSION PROVISIONS IN THEIR CHARTERS. The terms of this Act shall not apply to any city operating a municipal employees pension program under the terms and provisions of its charter.

Sec. 34. PARTIAL INVALIDITY. If any provision, section, part, subsection, sentence, clause, phrase, or paragraph of this Act be declared invalid or unconstitutional, the same shall not affect any other portion or provision hereof, and all other provisions shall remain valid and unaffected by such invalid portion, if any.

SECTION 2. This Act takes effect September 1, 1981.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Ogg moved to concur in the House amendment.

The motion prevailed.

SENATE BILL 1065 WITH HOUSE AMENDMENT

Senator Santiesteban called **S.B. 1065** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1 - Hernandez

Amend **S.B. 1065** by striking the words "demanded by the officer" on line 16 and inserting in its place the word "transferred."

The amendment was read.

Senator Santiesteban moved to concur in the House amendment.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 333 ON THIRD READING

Senator Santiesteban moved to suspend the regular order of business to take up for consideration at this time on its third reading and final passage:

S.B. 333, Relating to the provision of textbooks for nonpublic school students; adding Section 12.05 to Chapter 12, Texas Education Code, as amended.

The motion prevailed by the following vote: Yeas 23, Nays 7.

Yeas: Andujar, Brooks, Brown, Caperton, Glasgow, Harris, Jones, Kothmann, McKnight, Meier, Mengden, Ogg, Parker, Richards, Santiesteban, Sarpalius, Short, Snelson, Traeger, Travis, Truan, Vale, Wilson.

Nays: Blake, Doggett, Farabee, Howard, Leedom, Mauzy, Williams.

Absent: Uribe.

The bill was read third time and was passed by the following vote: Yeas 22, Nays 8.

Yeas: Andujar, Brooks, Brown, Caperton, Harris, Jones, Kothmann, McKnight, Meier, Mengden, Ogg, Parker, Richards, Santiesteban, Sarpalius, Short, Snelson, Traeger, Travis, Truan, Vale, Wilson.

Nays: Blake, Doggett, Farabee, Glasgow, Howard, Leedom, Mauzy, Williams.

Absent: Uribe.

(President Pro Tempore Traeger in Chair)

SENATE BILL 1216 ON SECOND READING

Senator Leedom moved to suspend the regular order of business to take up for consideration at this time:

S.B. 1216, Relating to the authority to create municipal courts of record in the city of Dallas and to provisions for the operation of the courts and appeals from the municipal courts of record.

The motion prevailed by the following vote: Yeas 20, Nays 10.

Yeas: Andujar, Blake, Brooks, Brown, Caperton, Farabee, Harris, Howard, Jones, Leedom, Meier, Mengden, Ogg, Richards, Santiesteban, Snelson, Traeger, Travis, Williams, Wilson.

Nays: Doggett, Glasgow, Kothmann, Mauzy, McKnight, Parker, Sarpalius, Truan, Uribe, Vale.

Absent: Short.

The bill was read second time.

Senator Mauzy offered the following amendment to the bill:

Amend Senate Bill No. 1216, Section 3, by striking the words "appointment or" on page 1, line 25, and by striking subsection (c) entirely and placing in lieu thereof the following new subsections (c) and (d) and renumbering subsections (d) and (e) appropriately:

(c) Before October 1, 1981, the governing body of the city of Dallas shall divide the city into the same number of compact municipal court of records districts as the number of municipal courts of record created under the authority vested by Section 2 above. Each district shall contain as nearly as possible the same number of residents as determined by the last preceding Federal census. The governing body of the city of Dallas shall redivide the city into the appropriate number of districts within six months following the publication of each succeeding Federal census. A change in district boundaries occurring as a result of redistricting does not effect the term of office of judges serving on the date of the election for which the change is effective, and each judge is entitled to serve for the remainder of the term to which he was elected.

(d) Residence within the municipal court of record district that a candidate seeks to represent is a prerequisite to filing for the office. If a judge fails to establish his residence within the district that he represents, if a judge moves his residence out of the district that he represents during his term of office, or if a change in district boundaries places a judge's residence outside the district for which he was elected and the judge fails to move his residence within the new boundaries before the 31st day following the date of the election for which the boundary changes were effective, the office shall be declared vacant. The governing body of the city of Dallas shall select a suitable person residing in the applicable district to fill the vacancy until the next regular municipal election. The judge elected shall serve for the unexpired term of the vacating judge or for a full term if the vacating judge's term has expired.

The amendment was read.

Senator Leedom moved to table the amendment.

The motion was lost by the following vote: Yeas 14, Nays 15, Present-not voting 1.

Yeas: Andujar, Blake, Brooks, Brown, Farabee, Glasgow, Howard, Jones, Leedom, Meier, Mengden, Richards, Snelson, Travis.

Nays: Caperton, Doggett, Kothmann, Mauzy, McKnight, Parker, Santiesteban, Sarpalius, Short, Traeger, Truan, Uribe, Vale, Williams, Wilson.

Present-not voting: Ogg.

Absent: Harris.

Question recurring on the adoption of the amendment, the amendment was adopted.

On motion of Senator Leedom and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

(President in Chair)

The bill as amended was passed to engrossment by the following vote: Yeas 22, Nays 8.

Yeas: Blake, Brooks, Brown, Farabee, Glasgow, Harris, Howard, Jones, Leedom, McKnight, Meier, Mengden, Ogg, Parker, Richards, Short, Snelson, Traeger, Travis, Vale, Williams, Wilson.

Nays: Caperton, Doggett, Kothmann, Mauzy, Santiesteban, Sarpalius, Truan, Uribe.

Absent: Andujar.

MOTION TO PLACE SENATE BILL 1216 ON THIRD READING

Senator Leedom moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 1216** be placed on its third reading and final passage.

The motion was lost by the following vote: Yeas 22, Nays 8. (Not receiving four-fifths vote of Members present)

Yeas: Blake, Brooks, Brown, Farabee, Glasgow, Harris, Howard, Jones, Leedom, McKnight, Meier, Mengden, Ogg, Parker, Richards, Santiesteban, Short, Snelson, Traeger, Travis, Williams, Wilson.

Nays: Caperton, Doggett, Kothmann, Mauzy, Sarpalius, Truan, Uribe, Vale.

Absent: Andujar.

MOTION TO PLACE SENATE BILL 238 ON SECOND READING

Senator Brown moved to suspend the regular order of business to take up for consideration at this time:

S.B. 238, Relating to a disannexation and municipal incorporation procedure for residents of certain areas annexed by a home-rule city. (Submitted by the Governor as an emergency)

The motion was lost by the following vote: Yeas 15, Nays 16.

Yeas: Andujar, Blake, Brooks, Brown, Doggett, Kothmann, Leedom, McKnight, Meier, Mengden, Santiesteban, Short, Snelson, Uribe, Wilson.

Nays: Caperton, Farabee, Glasgow, Harris, Howard, Jones, Mauzy, Ogg, Parker, Richards, Sarpalius, Traeger, Travis, Truan, Vale, Williams.

HOUSE BILL 729 ON SECOND READING

On motion of Senator Meier and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 729, Relating to delivery of a controlled substance to a minor.

The bill was read second time.

Senator Meier offered the following committee amendment to the bill:

Amend House Bill 729, SECTION 1, by amending Section 4.051(c) and adding Section 4.051(d).

(c) It is an affirmative defense to prosecution under this section that the actor was less than 21 years of age at the time the offense was committed and delivered solely marihuana in an amount less than one-fourth ounce for which the actor received no remuneration.

(d) An offense under this section is a felony of the first degree.

The committee amendment was read and was adopted.

On motion of Senator Meier and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

HOUSE BILL 729 ON THIRD READING

Senator Meier moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 729** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed.

SENATE BILL 969 ON SECOND READING

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 969, Relating to enhanced penalties for offenses against the elderly and the handicapped.

The bill was read second time and was passed to engrossment.

SENATE BILL 969 ON THIRD READING

Senator Glasgow moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 969** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent: Meier.

The bill was read third time and was passed.

HOUSE BILL 1368 ON SECOND READING

On motion of Senator Farabee and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1368, Relating to civil liability for conduct pertaining to the transportation or storage of hazardous materials and to duties of the Railroad Commission of Texas.

The bill was read second time.

Senator Farabee offered the following committee amendment to the bill:

Amend **H.B. 1368** by adding the following new subsection to Section 2, after line 7 on page 2:

(c) This section only applies when an incident has already occurred and there is a danger or a threat of danger to individuals, property or the environment.

The committee amendment was read.

Senator Doggett offered the following amendment to the pending committee amendment:

Insert "or accident" between the words "incident" and "has" on the first line of paragraph c of Section 2 so that such paragraph (c) to Section 2 shall read:

"(c) This section only applies when an incident or accident has already occurred and there is a danger or a threat of danger to individuals, property or the environment."

The amendment to the pending committee amendment was read and was adopted.

Question recurring on the adoption of the pending committee amendment as amended, the committee amendment as amended was adopted.

On motion of Senator Farabee and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

HOUSE BILL 1368 ON THIRD READING

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1368** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent: Glasgow, Jones.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0.

Absent: Glasgow, Jones.

HOUSE BILL 917 ON SECOND READING

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 917, Relating to motor vehicle sales and use tax on motor carriers.

The bill was read second time and was passed to third reading.

HOUSE BILL 917 ON THIRD READING

Senator Harris moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 917** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 0.

Absent: Andujar, Glasgow, Mengden, Uribe.

The bill was read third time and was passed.

MESSAGE FROM THE HOUSE

House Chamber
May 19, 1981

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

Sir: I am directed by the House to inform the Senate that the House has passed the following:

The House refused to concur in Senate amendments to **H.B. 840** and has requested the appointment of a Conference Committee to consider the differences between the two Houses.

House Conferees: Maloney, Chairman; Nabers, T. Smith, Burnett, Nowlin.

The House concurred in Senate amendments to **H.B. 857** by non-record vote.

The House concurred in Senate amendments to **H.B. 2298** by non-record vote.

The House concurred in Senate amendments to **H.B. 247** by non-record vote.

The House concurred in Senate amendments to **H.B. 801** by non-record vote.

The House concurred in Senate amendments to **H.B. 1000** by non-record vote.

The House refused to concur in Senate amendments to **H.B. 1421** and has requested the appointment of a Conference Committee to consider the differences between the two Houses.

House Conferees: Lewis, Chairman; Turner, Bock, Agnich, Saunders.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

(Senator Brown in Chair)

HOUSE BILL 872 ON SECOND READING

On motion of Senator Jones and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 872, Relating to the elimination of the tax clearance fund and certain tax enforcement funds and to the disposition and allocation of certain state revenue.

The bill was read second time.

Senator Jones offered the following committee amendment to the bill:

Amend **H.B. 872** by:

1. Striking "estimate" on line 20, p. 2 and adding "appropriation" in its place, and by
2. Striking the "board of trustees of the teacher retirement system" on line 20, p. 2 and adding the "legislature" in its place.

The committee amendment was read and was adopted.

Senator Jones offered the following committee amendment to the bill:

Amend **H.B. 872** by:

Adding a new Section 5 as follows and renumbering subsequent sections accordingly:

SECTION 5. Article 7.39, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

Art. 7.39. ENFORCEMENT FUND.

Two and one-half percent (2 1/2%) of three-fourths (3/4) of the gross revenue derived from the tax levied by this Chapter shall be set aside in a special fund subject to the use of the Comptroller to be expended in the administration and enforcement of the provisions of this Act and so much of the proceeds of two and one-half percent (2 1/2%) of three-fourths (3/4) of said tax and funds shall be and the same is hereby appropriated to the Comptroller for said purposes subject to appropriation by the Legislature in the General Appropriations Bill and same shall be paid monthly as needed.

Payment for the manufacturing or printing of the cigarette tax stamps and for any expenses incurred by the Board incident thereto shall be made from the revenue derived from the cigarette tax before such fund is allocated under the provisions of this Chapter and as much of said fund as may be necessary is hereby appropriated for such purpose, any unexpended portion of said funds so specified shall at the end of each biennium be paid in the proper proportion to the funds to which the cigarette tax fund shall be apportioned.

The committee amendment was read and was adopted.

Senator Jones offered the following committee amendment to the bill:

Amend H.B. 872 by:

Striking "commissioner of education, the state auditor" found on line 27, page 14 and adding "governor, the lieutenant governor" in their place.

The committee amendment was read and was adopted.

On motion of Senator Jones and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

HOUSE BILL 872 ON THIRD READING

Senator Jones moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 872 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 0.

Absent: Harris, Mengden, Richards, Vale.

The bill was read third time and was passed.

(President in Chair)

SENATE BILL 1000 ON SECOND READING

On motion of Senator McKnight and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1000, Relating to defects in indictments and informations.

The bill was read second time and was passed to engrossment.

SENATE BILL 1000 ON THIRD READING

Senator McKnight moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 1000** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent: Caperton, Richards.

The bill was read third time and was passed.

SENATE CONCURRENT RESOLUTION 111 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time:

S.C.R. 111, Creating a special interim committee to make a study of the Texas Mental Health Code for submission to the 68th Texas Legislature.

The resolution was read second time and was adopted.

SENATE RULE 103 SUSPENDED

On motion of Senator Santiesteban and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Jurisprudence might consider **H.B. 743** today..

SENATE RULE 103 SUSPENDED

On motion of Senator Snelson and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Education might consider **S.B. 1171** tomorrow.

RECESS

On motion of Senator Mauzy the Senate at 12:02 o'clock p.m. took recess until 2:00 o'clock p.m. today.

AFTER RECESS

The Senate met at 2:00 o'clock p.m. and was called to order by the President.

RECESS

On motion of Senator Mauzy, the Senate at 2:10 o'clock p.m. agreed to stand recessed until the completion of the meeting of the Subcommittee on Redistricting.

AFTER RECESS

The Senate met at 5:38 o'clock p.m. and was called to order by the President.

MESSAGE FROM THE HOUSE

House Chamber
May 19, 1981

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

Sir: I am directed by the House to inform the Senate that the House has passed the following:

H.C.R. 189, Expressing support for burial of Dr. H. Barnard, Texas Revolutionary hero, in state cemetery.

H.B. 1400, Relating to apportionment of the state into congressional districts.

The House concurred in Senate amendments to **H.B. 399** by record vote of 141 Ayes, 0 Nays, 2 present-not voting.

The House concurred in Senate amendments to **H.B. 889** by record vote of 139 Ayes, 9 Nays, 1 Present-not voting.

The House concurred in Senate amendments to **H.B. 685** by record vote of 143 Ayes, 0 Nays, 2 Present-not voting.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILL ON FIRST READING

The following bill received from the House was read the first time and referred to the Committee indicated:

H.B. 1400, To Committee of the Whole Senate.

HOUSE JOINT RESOLUTION 62 RECOMMITTED

On motion of Senator Brooks and by unanimous consent, **H.J.R. 62** was recommitted to the Committee on Human Resources.

(Senator Harris in Chair)

BILL SIGNED

The Presiding Officer (Senator Harris in Chair) announced the signing in the presence of the Senate, after the caption had been read, the following enrolled bill: